

**Amended Test Claim of:
County of Tuolumne**

Volume I

**SEX OFFENDERS: DISCLOSURE BY LAW ENFORCEMENT
OFFICERS ("MEGAN'S LAW")**

97-TC-15

EXHIBITS

Exhibit 1

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(c) A health facility, as defined in subdivisions (b), (e), (g), (h), (j), and subparagraph (C) of paragraph (2) of subdivision (i) of Section 1250 of the Health and Safety Code, in which the victim has been confined involuntarily.

(d) As used in this section, "sexual activity" means:

- (1) Sexual intercourse.
- (2) Sodomy, as defined in subdivision (a) of Section 286.
- (3) Oral copulation, as defined in subdivision (a) of Section 288a.
- (4) Penetration, however slight, of the genital or anal openings of another person by a foreign object, substance, instrument, or device, for the purpose of sexual arousal, gratification, or abuse.

(e) Consent by a confined person to sexual activity proscribed by this section is not a defense to a criminal prosecution for violation of this section.

(f) This section does not apply to sexual activity between consenting adults that occurs during an overnight conjugal visit that takes place pursuant to a court order or with the written approval of an authorized representative of the public entity that operates or contracts for the operation of the detention facility where the conjugal visit takes place.

(g) Any violation of this section is a misdemeanor.

(h) Any person previously convicted of a violation of this section shall, upon a subsequent violation, be guilty of a felony.

(Added by Stats.1994, c. 499 (A.B.1568), § 1. Amended by Stats.1997, c. 209 (A.B.685), § 1.)

Historical and Statutory Notes

Stats.1997, c. 209, added subd. (c)(6) including health facilities in the definition of detention facility; and in subd. (g), substituted "is a misdemeanor" for "shall be a misdemeanor".

Library References

Treatises and Practice Aids

Wilkin & Epstein, Criminal Law (2d ed)
§ 792B.

§ 290. Registration of sex offenders

(a)(1)(A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(C) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, on a form as may be required by the Department of Justice.

(D) In addition, every person who is a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days in a manner established by the Department of Justice.

(E) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence in which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

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(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F)(i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to

register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b)(1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge,

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be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d)(1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as

requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e)(1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

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(F)(1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g)(1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraph (5), any person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, who willfully violates any

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place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(l)(1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified whenever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m)(1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

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(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4 and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses

Stats.1997, c. 821 (A.B.290), § 3, eff. Oct. 9, 1997; Stats.1997, c. 821 (A.B.290), § 3.5, eff. Oct. 9, 1997, operative Jan. 1, 1998; Stats.1998, c. 485 (A.B.2803), § 128-129; Stats.1998, c. 927 (A.B.796), § 1; Stats.1998, c. 928 (A.B.1927), § 1; Stats.1998, c. 92 (A.B.1745), § 1; Stats.1998, c. 930 (A.B.1078), § 1.1.)

OFFICIAL FORMS

Mandatory and optional Forms adopted and approved by the Judicial Council are set out in West's California Judicial Council Forms Pamphlet.

Historical and Statutory Notes

The 1986 amendment made certain nonsubstantive changes.

The 1987 amendment inserted "647.6 or former section" in subd. (a); required a copy of the form stating that the duty of the person to register if a felony conviction be sent to the department of justice rather than the court where the person was prosecuted and one copy be retained by the official in charge of the place of confinement and made conforming changes in subd. (b); inserted par. (2) of subd. (d) relating to a person convicted of a violation of § 647.6 and redesignated former pars. (2) to (4) as pars. (3) to (5); substituted the "Youthful Offender Parole Board" for the "Youth Authority" in subd. (h); and deleted former subd. (m) which made the section operative Jan. 1, 1988.

Under the provisions of § 9.2 of Stats.1987, c. 1418, the 1987 amendments of this section by c. 753 and c. 1418 were given effect and incorporated in the form set forth in § 3.1 of c. 1418. An amendment of this section by § 3 of Stats. 1987, c. 1418, failed to become operative under the provisions of § 9.2 of that Act.

The 1989 amendment, in subd. (a), added § 288.5 and any felony violation of § 288.2 to the enumeration of offenses requiring registration, and added provisions relating to registration with campus police at the end of subd. (a); inserted "or agencies" following "agency" throughout the section; added § 288.5 to the enumerated sections in subds. (d) and (g); added subd. (g)(2) relating to subsequent convictions of failing to register; and made nonsubstantive changes in subds. (a) and (g).

Legislative findings and intent relating to Stats.1989, c. 1402, and severability of that act, see Historical and Statutory Notes under Evidence Code § 782.

Under the provisions of § 5 of Stats.1989, c. 1407, the 1989 amendments of this section by c. 1316, c. 1402, and c. 1407 were given effect and incorporated in the form set forth in § 4 of c. 1407. Amendments of this section by §§ 1, 2, and 3 of Stats.1989, c. 1407, failed to become operative under the provisions of § 5 of that Act.

Amendments of this section by §§ 2.1, 2.2, 2.3 of Stats.1989, c. 1316, failed to become operative under the provisions of § 2.6 of that Act.

Amendments of this section by §§ 5.5, 5.6, 5.7 of Stats.1989, c. 1402, failed to become operative under the provisions of § 13.5 of that Act.

The 1992 amendment, in subd. (h), in the first sentence, substituted "parole authority" for "Board of Prison Terms", and inserted the second sentence defining parole authority; and made nonsubstantive changes throughout.

Amendment of this section by § 4 of Stats. 1992, c. 925 (A.B.2220), failed to become operative under the provisions of § 5 of that Act.

The 1992 amendment of this section by c. 925 explicitly amended the 1992 amendment of this section by c. 197.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Section 2 of Stats.1992, c. 197 provides:

"It is the intent of the Legislature in enacting Section 1 of this bill to abrogate the holding in *People v. Saunders*, 232 Cal.App.3d 1592."

The 1993 amendment, by c. 555 (A.B.191), in subd. (a), inserted "oral copulation, or any violation of Section 264.1, 288, or 289" following "sodomy"; in subd. (d)(1), inserted "Department of the" and inserted subparagraph letters; in subd. (d)(1)(A), deleted the reference to § 288.5; in subd. (d)(1)(B), inserted a reference to § 288.5; in subd. (g)(1), inserted "any violation of Section 264.1, 288, or 289 under Section 220," and made nonsubstantive changes throughout the section.

The 1993 amendment, by c. 595 (A.B.187), in subd. (a), inserted "or any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison," in subd. (g)(1), inserted "under Section 220," following "sodomy," and inserted "any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison," and made nonsubstantive changes throughout the section.

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Under the provisions of § 9 of Stats.1993, c. 595 (A.B.187), the 1993 amendments of this section by c. 555 (A.B.191) and c. 595 (A.B.187) were given effect and incorporated in the form set forth in § 1 of c. 555, operative until Jan. 1, 1994, and then in the form set forth in § 8 of Stats.1993, c. 595. An amendment of this section by § 7 of Stats.1993, c. 595, failed to become operative under the provisions of § 9 of that act.

An amendment of this section by § 1.5 of Stats.1993, c. 555, failed to become operative under the provisions of § 4 of that act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Subordination of legislation by Stats.1993, c. 589 (A.B.221), see Historical and Statutory Notes under Business and Professions Code § 1680.

Section 3 of Stats.1993, c. 555 (A.B.191), provides:

"It is the intent of the Legislature in enacting on 1 of this bill to abrogate the holding in *le v. Saunders*, 232 Cal.App.3d 1592."

The 1994 amendment, by c. 867, rewrote the section, which had read:

"(a) [Duty to register; time.] Any person who, since July 1, 1944, has been or is hereafter convicted in this state of the offense of assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220, or of any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, or of any offense defined in Section 264.1, 266, 267, 285, 286, 288, 288a, 288.5, 289, or 647.6 or former Section 647a, subdivision (d) of Section 647, or subdivision 1 or 2 of Section 314, or of any offense involving lewd and lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; or any person who since that date or at any time hereafter is discharged or paroled from a penal institution where he or she was confined because of the commission or attempt to commit one of the above-mentioned offenses; or any person who since that date or at any time hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code; or any person who has been since that date or is hereafter convicted in any other state of any offense which, if committed or attempted in this state,

would have been punishable as one or more of the above-mentioned offenses, shall, within 30 days after the effective date of this section or within 14 days of coming into any county, city, or city and county in which he or she temporarily resides or is domiciled for that length of time, register with the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

"(b) [Notice of duty to register; prisoner or inmate.] Any person who, after August 1, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where he or she was confined because of the commission or attempt to commit one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person, and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction which makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency which prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. All forms shall, if the conviction which makes the person subject to this section is a felony conviction, be transmitted within those times as to be received by the local law enforcement agency or agencies, and prosecut-

ing agency 30 days prior to the discharge, parole, or release of the person.

"(c) [Notice of duty to register; probationer or one paying fine.] Any person who, after August 1, 1950, is convicted in this state of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

"(d) [Persons discharged or paroled from Youth Authority; destruction of records.] (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the following offenses shall be subject to registration under the procedures of this section:

"(A) Assault with Intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

"(B) Any offense defined in Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, or subdivision (a) of Section 289.

"(C) Any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

"(2) Any person who is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after

January 1, 1988, shall be subject to registration under the procedures of this section.

"(3) Prior to discharge or parole from the Department of the Youth Authority, all persons subject to registration shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

"(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25 years.

"(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person required to register attains the age of 25 years or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code, whichever event occurs first. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

"(e) [Contents of registration.] The registration shall consist of (1) a statement in writing signed by the person, giving information as may be required by the Department of Justice, and (2) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, and photograph to the Department of Justice.

"(f) [Change of address.] If any person required to register pursuant to this section changes his or her residence address, the person shall inform, in writing within 10 days, the law enforcement agency or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

"(g) [Violation; offense; sentence.] (1) Any person required to register under this section who violates any of its provisions is guilty of a misdemeanor. Any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220, any violation of Section 264.1, 288, or 289 under Section 220, any violation of Section 261, any offense defined in paragraph (1) of subdivi-

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tion (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, or any violation of Section 264.1, 286, 288, 288a, 288.5, or 289, and who is required to register under this section who willfully violates any of the provisions of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

"(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for 16 months, or two or three years.

"The existence of any fact which would bring a person under this paragraph shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

"(h) [Violation; parole revocation.] Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, 'parole authority' has the same meaning as described in Section 3000.

"(i) [Confidential records.] The statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

"(j) [Temporary release; notice to local law enforcement agency.] In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person temporarily re-

leased under guard from the institution where he or she is confined.

"(k) [Mentally disordered sex offender defined.] As used in this section, 'mentally disordered sex offender' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

"(l) [Notice of reduction of registration period.] Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 30 days."

Sections 1 and 7 of Stats.1994, c. 867 (A.B. 2500), provide:

"Section 1. This bill shall be known and may be cited as the Child Protective Act of 1994."

"Sec. 7. This act shall become operative only if Assembly Bill 3026 [Stats.1994, c. 875] of the 1993-94 Regular Session is enacted and becomes effective on or before January 1, 1995."

Under the provisions of § 4.5 of Stats.1994, c. 867, the 1994 amendments of this section by c. 863 (A.B.3456), c. 864 (A.B.1211), c. 865 (A.B. 3513), and c. 867 (A.B.2500) were given effect and incorporated in the form set forth in § 2.7 of c. 867. Amendments of this section by §§ 2, 2.1, 2.2, 2.3, 2.4, 2.5, and 2.6 of Stats.1994, c. 867 (A.B.2500), failed to become operative under the provisions of § 4.5 of that Act.

Amendments of this section by §§ 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, and 1.7 of Stats.1994, c. 863 (A.B.3456), failed to become operative under the provisions of § 4 of that Act.

Amendments of this section by §§ 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, and 1.7 of Stats.1994, c. 865 (A.B.3513), failed to become operative under the provisions of § 2 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1995 amendment by c. 840, in subd. (a)(2)(A), inserted "kidnapping, as punishable pursuant to subdivision (d) of Section 208," following "Section 207," substituted "Section 243.4" for "or 243.4", deleted "or" following "Section 647," and "Section 314," and "of" following "Section 272, or"; in subd. (d)(3)(B), inserted ", subdivision (b) of Section 207, or

kidnapping, as punishable pursuant to subdivision (d) of Section 208" following "Section 289"; in subd. (g)(2), inserted "subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208," following "289"; and made nonsubstantive changes throughout.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Subordination of legislation by Stats.1995, c. 91 (S.B.975), to other 1995 legislation, see Historical and Statutory Notes under Business and Professions Code § 35.

Section 5 of Stats.1995, c. 840 (S.B.295), provides:

"If both this bill and AB 95 [not enrolled] or AB 401 [not enrolled] are enacted, or all three bills are enacted, amend Section 290 of the Penal Code, and become effective on January 1, 1996, and this bill is chaptered last, Section 2 of this bill shall not become operative."

The 1996 amendment by c. 908 deleted "All forms shall, if the conviction which makes the person subject to this section is a felony conviction, be transmitted within those times as to be received by the local law enforcement agency or agencies and prosecuting agency 30 days prior to the discharge, parole, or release of the person." from the end of subd. (b); inserted "subdivisions (m) and (n) and" preceding "Section 290.4" in subd. (i); added subd. (m) relating to disclosure of information to specified institutions, etc. when a peace officer reasonably suspects that a person may be at risk from a sex offender; added subd. (n) relating to advising the public of the presence of high-risk sex offenders in its community; added subd. (o) relating to maintenance of records by agencies disseminating information to the public; added subd. (p) providing immunity from liability for good faith conduct; added subd. (q) relating to punishment for using information disclosed pursuant to the section to commit a felony or misdemeanor; and added subd. (r) relating to application of registration and public notification provisions of the section.

The 1996 amendment by c. 909, in subd. (a), substituted "within five working days of coming into any city" for "within 14 days of coming into any city"; substituted "within five working days of his or her birthday" for "within 10 days of his or her birthday"; and inserted "name and" preceding "address"; substituted "commission of any offense" for "commission of the offenses" in subd. (d)(1); in subd. (f), inserted "name or" preceding "residence address" and "address", and substituted "within five working days" for "within 10 days"; and added subd. (1)(2) relating to notification to persons re-

quired to register of the reduction in the registration period.

Under the provisions of § 3 of Stats.1996, c. 909, the 1996 amendments of this section by c. 908 (A.B.1562) and c. 909 (S.B.1378) were given effect and incorporated first in form set forth in § 2 of Stats.1996, c. 908 (A.B.1562), operative until January 1, 1997; then in the form set forth in § 2 of c. 909. An amendment of this section by § 1 of Stats.1996, c. 909 (S.B.1378), failed to become operative under the provisions of § 3 of that Act.

An amendment of this section by § 2.5 of Stats.1996, c. 908 (A.B.1562), failed to become operative under the provisions of § 4 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Section 1 of Stats.1996, c. 908 (A.B.1562), provides:

"The Legislature finds and declares the following:

"(a) Sex offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is a paramount public interest.

"(b) It is a compelling and necessary public interest that the public have information concerning persons convicted of offenses involving unlawful sexual behavior collected pursuant to Sections 290 and 290.4 of the Penal Code to allow members of the public to adequately protect themselves and their children from these persons.

"(c) Persons convicted of these offenses involving unlawful sexual behavior have a reduced expectation of privacy because of the public's interest in public safety.

"(d) In balancing the offenders' due process and other rights against the interests of public security, the Legislature finds that releasing information about sex offenders under the circumstances specified in this act will further the primary government interest of protecting vulnerable populations from potential harm.

"(e) The registration of sex offenders, the public release of specified information about certain sex offenders pursuant to Sections 290 and 290.4 of the Penal Code, and public notice of the presence of certain high-risk sexual offenders in communities will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems that deal with these offenders.

"(f) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of sex offend-

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ers, for the public release of specified information regarding certain more serious sex offenders, and for community notification regarding high-risk sex offenders who are about to be released from custody or who already reside in communities in this state. This policy of authorizing the release of necessary and relevant information about serious and high-risk sex offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive.

"(g) The Legislature also declares, however, that in making information available about certain sex offenders to the public, it does not intend that the information be used to inflict retribution or additional punishment on any such person convicted of a sexual offense. While the Legislature is aware of the possibility of misuse, it finds that the dangers to the public of nondisclosure far outweigh the risk of possible misuse of the information. The Legislature is further aware of studies in Oregon and Washington indicating that community notification laws and public release of similar information in those states have resulted in little criminal misuse of the information and that the enhancement to public safety has been significant."

Stats.1997, c. 821, § 3, in subd. (a)(1), inserted "or city that has no police department" and inserted "No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. Beginning on his or her first birthday following registration or change of address," in subd. (a)(2), in subpar. (A), deleted "subdivision (d) of Section 647" following "Section 647a", in subpar. (C), inserted the clause relating to any person found guilty but then found not guilty by reason of insanity, and added subpar. (F), relating to persons convicted prior to Jan. 1, 1976, for violations of subd. (a) of § 286 or § 288a; in subd. (b), designated the existing text as pars. (1) and (2); in subd. (c), substituted "probation department" and a probation officer for "court in which the person has been convicted, and the court" and twice substituted "probation officer" for "court"; rewrote subd. (e); in subd. (f), designated the existing text as par. (1) and deleted "name or" preceding "residence address" and "address" and substituted "a copy of the change of address information" for "it" therein and added par. (2), relating to changes of name; in subd. (g), deleted par. (2), rewrote and redesignated par. (3) as par. (2), inserted a new par. (3) relating to mentally disordered sex offenders or those found not guilty by reason of insanity, and added par. (5), relating to willful violations of the section; in subd. (j), substituted "subdivision" for "provision"; in subd. (l), deleted par. (2) and deleted the paragraph designation from par. (2); in subd. (m), in par. (4), changed the subparagraph designations and inserted "both

of the following"; in subd. (n), in the introductory paragraph, substituted "designated law enforcement entity" for "law enforcement agency", in par. (1)(A), substituted "specified in paragraph (1) of subdivision (a) of Section 290.4" for "for which registration is required under paragraph (2) of subd. (a)", in par. (1)(C), inserted "or Section" preceding "203", inserted "or" preceding "236" and inserted "Section" preceding "273d", in par. (1)(D), inserted "or" prior to "314" and "646.9" and inserted "Section" prior to "459", "597", and "653m", in pars. (1)(I), (2) and (3), substituted "designated law enforcement entity" for "law enforcement agency"; rewrote subds. (o) and (p); in subd. (r), substituted "this section" for "these sections"; and made nonsubstantive changes. Prior to amendment, subd. (e), pars. (2) and (3) of subd. (g), par. (1) of subd. (l), and subds. (o) and (p) read:

"(e)(1) The registration shall consist of the following:

"(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

"(B) The fingerprints and photograph of the person.

"(C) The license plate number of any vehicle owned by or registered in the name of the person.

"(2) Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice."

"[(g)](2) Notwithstanding paragraph (1), any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220, any violation of Section 264.1 or 289 under Section 220, any violation of Section 261, any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, any violation of Section 264.1, 286, 288, 288a, 288.5, or 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208, and who is required to register under this section who willfully violates this section is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

"(3) Any person required to register under this section based on a felony conviction who willfully violates this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a felony and shall be punished by imprisonment in the state prison for 16 months or two or three years."

"(l)(1) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 30 days."

"(o) Agencies disseminating information to the public pursuant to subdivision (a) shall maintain records of the offender and the means and dates of dissemination for a minimum of five years."

"(p) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this section."

Stats. 1997, c. 821, § 3.5, in subd. (a), rewrote par. (1), in par. (2)(A), substituted "Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289" for "subdivision (b) of Section 207, kidnapping, as punishable pursuant to subdivision (d) of Section 208," inserted "subdivision (b) of Section 266h, subdivision (b) of Section 266i," inserted "269," substituted "subdivision (c) of Section 653f" for "subdivision (d) of Section 647" and substituted "or" for "and" following "lewd", in par. (2)(D), inserted "state," preceding "federal", and inserted the clauses relating to persons ordered to register who committed the offense due to sexual compulsion or for sexual gratification; in subd. (b), in par. (1) and in subd. (c), deleted "after August 1, 1950," following "Any person who"; in subd. (d), in par. (1), inserted "juvenile", in par. (2), deleted "on or after January 1, 1995," following "Any person who" and deleted a reference to paragraph (4), rewrote par. (3), deleted par. (4), redesignated pars. (5) and (6) as pars. (4) and (5), and in newly designated par. (4), inserted "under this subdivision"; in subd. (e), in par. (2), added subpar. (D), relating to notice of duty to register in another state upon relocation; rewrote subd. (g); in subd. (i), designated the existing text as par. (1) and added par. (2), relating to notice to sexually violent predators of increased registration obligations; in subd. (n), in par. (1)(A), added (v), relating to sexually violent predators, in par. (1)(I), substituted "any campus of the University of California or California State University" for "any state university, state college", and in par. (3), inserted "offender's" prior to "vehicles"; and made nonsubstantive changes. Prior to amendment, par. (1) of subd. (a), pars. (3) and (4) of subd. (d), and subd. (g) read:

"(a)(1) Every person described in paragraph (2), for the rest of his or her life while residing in California, shall be required to register with the chief of police of the city in which he or she

is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area of a city that has no police department, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities, within five working days of coming into any city, county, or city and county in which he or she temporarily resides or is domiciled for that length of time. No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. Beginning on his or her first birthday following registration or change of address, the person shall be required annually thereafter, within five working days of his or her birthday, to update his or her registration with the entities described in this paragraph, including, verifying his or her name and address on a form as may be required by the Department of Justice."

"[(d)](3) The following offenses shall apply for the purpose of this subdivision:

"(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

"(B) Any offense defined in Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, subdivision (a) of Section 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208.

"(C) Any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

"(4) Any person who is discharged or paroled from the Department of the Youth Authority, or from the custody of which he or she was committed, after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section."

"(g)(1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

"(2) Any person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any

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requirement of this section is guilty of a felony, and shall be punished by imprisonment in the state prison for 16 months or two or three years.

"If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

"(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

"(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

"(5) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense."

Under the provisions of § 5 of Stats.1997, c. 821, the 1997 amendments of this section by c. 80 (A.B.213), c. 817 (A.B.59), c. 818 (A.B.1303), c. 819 (S.B.314), c. 820 (S.B.882), and c. 821 (A.B.290) were given effect first in the form set forth in § 3 of c. 821 and on Jan. 1, 1998, given effect and incorporated in the form set forth in § 3.5 of c. 821.

Amendment of this section by § 1.5 of Stats. 1997, c. 820 (S.B.882), failed to become operative under the provisions of § 2 of that Act.

Amendment of this section by § 1.5 of Stats. 1997, c. 819 (S.B.314), failed to become operative under the provisions of § 3 of that Act.

Stats.1997, c. 818 (A.B.1303), § 1, provides:

"In order to ensure the continued receipt of federal anti-drug abuse funds by the state and to protect the public from repeat violent sex offenders, it is the intent of the Legislature that California sex offender registration statutes comply with the provisions of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program contained in the federal Violent Crime Control and Law Enforcement Act of 1994 (Section 14071 of Title 42 of the United States Code)."

Construction of Stats.1997, c. 817 (A.B.59), see Historical and Statutory Notes under Penal Code § 208.

Sections 2 and 3 of Stats.1997, c. 80, provide:

"Sec. 2. The Attorney General shall do all of the following:

"(a) Work with local law enforcement agencies to determine whether the existing registry of sex offenders established by Section 290 of the Penal Code is meeting the needs of law enforcement. The Attorney General shall report to the Legislature by December 31, 1998, on his or her findings.

"(b) Work with the chief law enforcement officers of other states to develop a national registry of sex offenders, as required by federal law. The registry should include persons who are required to register in any state and should specifically mark those offenders who are registered in multiple states.

"(c) Work with Attorney Generals of other states to amend registration statutes to inform persons required to register as sex offenders of their responsibility to register in any other state where they may relocate.

"Sec. 3. The Legislature finds and declares that the amendments made to subparagraphs (D) and (E) of paragraph (2) of subdivision (a) of Section 290 of the Penal Code, as set forth in Section 1 of this act, do not constitute a change in, but are declaratory of, existing law."

Subordination of legislation by Stats.1997, c. 17 (S.B.947), to other 1997 legislation, see Historical and Statutory Notes under Business and Professions Code § 30.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Stats.1998, c. 930, in subd. (a)(1)(A), inserted ", or changing his or her residence or location within," following "coming into" and ", or campus" following "county"; in subd. (a)(1)(D), inserted "no less than once" following "address"; in subd. (a)(1)(E), added the second sentence, relating to submission of the registrations into the network; in subds. (a)(2)(D) and (a)(2)(E), inserted "or sentencing" following "conviction"; in subd. (c), inserted ", granted conditional release without supervised proba-

tion," following "probation"; in the third sentence of subd. (e)(1), substituted "all" for "both"; inserted subd. (e)(2)(E), relating to adequate proof of residence; in subd. (f)(1), inserted "or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state" following "address" and "or location" following "address" and "residence" inserted subd. (f)(2), relating to when a new address is a youth facility, prison, or institution; redesignated as subd. (f)(3) former subd. (f)(2); in subd. (g)(6), substituted "Except as otherwise provided in paragraph (5), and in" for "In" and "subparagraph" for "subdivision"; inserted subd. (m)(2) and (m)(3); redesignated as subd. (m)(4) to (m)(9) former subd. (m)(2) to (m)(7); inserted subd. (n)(4); in subd. (p), inserted "or local" following "state" and made nonsubstantive changes; and added subd. (p)(2), relating to educational institutions and child care facilities.

Under the provisions of § 2 of Stats.1998, c. 930, the 1998 amendments of this section by c. 927 (A.B.796), c. 928 (A.B.1927), c. 929 (A.B.1745) and c. 930 (A.B.1078) were given effect and incorporated in the form set forth in § 1.1 of c. 930.

An amendment of this section by §§ 1, 1.2, 1.3, and 1.4 of Stats.1998, c. 930, failed to become operative under the provisions of § 2 of that Act.

An amendment of this section by §§ 1.1, 1.2, 1.3, and 1.4 of Stats.1998, c. 929 (A.B.1745),

failed to become operative under the provisions of § 3 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Subordination of legislation by Stats.1998, c. 485 (A.B.2803), to other 1998 legislation, see Historical and Statutory Notes under Business and Professions Code § 4840.

Former § 290, added by Stats.1947, c. 1124, § 1, amended by Stats.1949, 1st Ex.Sess., c. 13, § 1; Stats.1950, 1st Ex.Sess., c. 70, § 1; Stats.1953, c. 400, § 1; Stats.1955, c. 169, § 1; Stats.1961, c. 560, § 3; Stats.1961, c. 2147, § 8; Stats.1967, c. 716, § 1; Stats.1970, c. 1301, § 4; Stats.1972, c. 1377, § 70; Stats.1975, c. 71, § 12; Stats.1979, c. 944, § 8; Stats.1984, c. 1419, § 1; Stats.1985, c. 929, § 4; Stats.1985, c. 1474, § 1, relating to the same subject matter, was repealed by its own terms on Jan. 1, 1988.

Former § 290, enacted in 1872, relating to unlawful mutilation or removal of dead bodies, was repealed by Stats.1939, c. 60, p. 1000, § 40000. See Health and Safety Code § 7052.

Derivation: Former § 290, added by Stats.1947, c. 1124, § 1, amended by Stats.1949, 1st Ex.Sess., c. 13, § 1; Stats.1950, 1st Ex.Sess., c. 70, § 1; Stats.1953, c. 400, § 1; Stats.1955, c. 169, § 1; Stats.1961, c. 560, § 3; Stats.1961, c. 2147, § 8; Stats.1967, c. 716, § 1; Stats.1970, c. 1301, § 4; Stats.1972, c. 944, § 8; Stats.1984, c. 1419, § 1; Stats.1985, c. 929, § 4; Stats.1985, c. 1474, § 1.

Cross References

Name change, restrictions, see Code of Civil Procedure § 1279.5.

Petition to seal court records by person arrested for misdemeanor while a minor, see Penal Code § 851.7.

Photographs of minors that are harmful matter, preservation of and access to evidence, application to actions under this section, see Penal Code § 1417.8.

Release of persons required to register under this section, information to authorities, see Penal Code § 290.6.

Revocation of parole, refusal to sign duty to register form, see Penal Code § 3060.5.

Sex offender registrant parolees, residing in single family dwellings with other registrants, see Penal Code § 3003.5.

Volunteer aides in schools, service by persons registered pursuant to this section, see Education Code § 35021.

Code of Regulations References

Special conditions of parole, see 15 Cal. Code of Regs. § 3901.9.4.

Law Review and Journal Commentaries

Child sexual abuse in California: Legislative and judicial responses. 15 Golden Gate U.L.Rev. 437 (1985).

Consenting adult homosexuals: Enforcement techniques. 13 UCLA L.Rev. 686 (1966).

Interval between arrest and trial. 13 UCLA L.Rev. 743 (1966).

Criminal malpractice. Otto M. Kaus and Ronald E. Mallen, 21 UCLA L.Rev. 1191 (1974).

Review of selected 1989 California legislation. 21 Pac.L.J. 424 (1990).

Review of selected 1992 California legislation. 24 Pac.L.J. 795 (1993).

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committing an offense listed in Section 290. Moneys deposited in the General Fund pursuant to this section shall be deposited in the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and, when appropriated by the Legislature, shall be used for the purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders."

Sections 1 and 7 of Stats. 1994, c. 867 (A.B. 2500), provide:

"Section 1. This bill shall be known and may be cited as the Child Protective Act of 1994."

"Sec. 7. This act shall become operative only if Assembly Bill 3026 [Stats. 1994, c. 875] of the 1993-94 Regular Session is enacted and becomes effective on or before January 1, 1995."

Library References

Treatises and Practice Aids

Witkin & Epstein, Criminal Law, (2d. ed) § 1417.

Notes of Decisions

Ability to pay 1

1. Ability to pay

Prior determination of defendant's ability to pay is not predicate to a fine upon conviction

Under the provisions of § 4.7 of Stats. 1994, c. 867, the 1994 amendments of this section by c. 866 (A.B.304) and c. 867 (A.B.2500) were given effect and incorporated in the form set forth in § 3.5 of c. 867. An amendment of this section by § 3 of Stats. 1994, c. 867 (A.B.2500), failed to become operative under the provisions of § 4.7 of that Act.

Amendment of this section by § 2 of Stats. 1994, c. 866 (A.B.304), failed to become operative under the provisions of § 4 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1995 amendment made nonsubstantive changes to maintain the code.

Subordination of legislation by Stats. 1995, c. 91 (S.B.975), to other 1995 legislation, see Historical and Statutory Notes under Business and Professions Code § 35.

§ 290.4. Sex offender registration; compilation of information for specified offenses; "900" telephone number; income deposit; violations; penalties; report to legislature

(a)(1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that the offense is a felony; Section 266c, provided that the offense is a felony; Section 266j; Section 267; Section 269; paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony; subdivision (i) or (j) of Section 289; Section 647.6; or the statutory predecessor of any of these offenses or any offense which, if committed or attempted in this

state, would have been punishable as one or more of the offenses described in this section. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraph (5) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5.

(2) The information shall be categorized by community of residence and ZIP Code. The information shall include the names and known aliases of the person, photograph, a physical description, gender, race, date of birth, the criminal history, and the address, including ZIP Code, in which the person resides, and any other information that the Department of Justice deems relevant, not including information that would identify the victim.

(3) The department shall operate a "900" telephone number that members of the public may call and inquire whether a named individual is listed among those described in this subdivision. The caller shall furnish his or her first name, middle initial, and last name. The department shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the information described in paragraph (2), except the department shall not disclose the street address or criminal history of a person listed, except to disclose the ZIP Code area in which the person resides and to describe the specific crimes for which the registrant was required to register. The department shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (A) an exact street address, including apartment number, social security number, California driver's license or identification number, or birth date along with additional information that may include any of the following: name, hair color, eye color, height, weight, distinctive markings, ethnicity; or (B) any combination of at least six of the above listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, a seventh identifying characteristic shall be provided. Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded by the department.

(4)(A) On or before July 1, 1997, the department shall provide a CD-ROM or other electronic medium containing the information described in paragraph (2), except the person's street address and criminal history other than the specific crimes for which the person was required to register, for all persons described in paragraph (1) of subdivision (a), and shall update and distribute the CD-ROM or other electronic medium on a monthly basis to the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (n) of Section 290. These law enforcement agencies may obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee. The Department of Justice, the sheriff's departments, and the municipal police departments of cities with a population of more than 200,000 shall make, and the other law enforcement agencies may make, the CD-ROM or other electronic medium available for viewing by the

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public in accordance with the following: The agency may require that a person applying to view the CD-ROM or other electronic medium express an articulable purpose in order to have access thereto. The applicant shall provide identification in the form of a California driver's license or California identification card, showing the applicant to be at least 18 years of age, and shall sign a statement, on a form provided by the Department of Justice, stating that the applicant is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders, and he or she understands it is unlawful to use information obtained from the CD-ROM or other electronic medium to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the designated law enforcement agency's office.

(B) The records of persons requesting to view the CD-ROM or other electronic medium are confidential, except that a copy of the applications requesting to view the CD-ROM or other electronic medium may be disclosed to law enforcement agencies for law enforcement purposes.

(C) Any information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the CD-ROM or other electronic medium.

(5)(A) The income from the operation of the "900" telephone number shall be deposited in the Sexual Predator Public Information Account, which is hereby established within the Department of Justice for the purpose of the implementation of this section by the Department of Justice, including all actual and reasonable costs related to establishing and maintaining the information described in subdivision (a) and the CD-ROM or other electronic medium described in this subdivision.

(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the "900" telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of the act adding this section, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

(C) When the "900" telephone number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide the following information:

- (i) Notice that the caller's telephone number will be recorded.
- (ii) The charges for use of the "900" telephone number.
- (iii) Notice that the caller is required to identify himself or herself to the operator.
- (iv) Notice that the caller is required to be 18 years of age or older.
- (v) A warning that it is illegal to use information obtained through the "900" telephone number to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.

(vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, address, and other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.

(vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.

(viii) A statement that the caller should have a reasonable suspicion that a person is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars (\$600,000) per year from any moneys appropriated by the Legislature from the account.

(b)(1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(c) The record of the compilation of offender information on each CD-ROM or other electronic medium distributed pursuant to this section shall be used only for law enforcement purposes and the public safety purposes specified in this section and Section 290. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section or Section 290, or any other statute expressly authorizing it.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision shall not apply to a law enforcement officer who makes a copy as part of his or her official duties in the course of a criminal investigation, court case, or as otherwise authorized by subdivision (n) of Section 290. This subdivision shall not prohibit copying information by handwriting.

Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(d) Unauthorized removal or destruction of the CD-ROM or other electronic medium from the offices of any law enforcement agency is a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

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(e)(1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information, for purposes relating to any of the following, and that is disclosed pursuant to this section, is prohibited:

- (A) Health insurance.
- (B) Insurance.
- (C) Loans.
- (D) Credit.
- (E) Employment.
- (F) Education, scholarships, or fellowships.
- (G) Housing or accommodations.
- (H) Benefits, privileges, or services provided by any business establishment.

(3)(A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) of subdivision (e) or in violation of paragraph (2) of subdivision (e) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the "900" telephone number in violation of paragraph (2) of subdivision (e), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(f) This section shall not be deemed to authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

(g) Community notification shall be governed by subdivisions (m) and (n) of Section 290.

(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the "900" telephone number required by paragraph

(3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

- (1) Number of calls received.
- (2) Amount of income earned per year through operation of the "900" telephone number.
- (3) A detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section.
- (4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).
- (5) Number of persons listed pursuant to subdivision (a).
- (6) A summary of the success of the "900" telephone number program based upon selected factors.

(i) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(j) On or before July 1, 2000, the Department of Justice shall make a report to the Legislature concerning the changes to the operation of the "900" telephone number program made by the amendments to this section by Chapter 908 of the Statutes of 1996. The report shall include all of the following:

- (1) Number of calls received by county.
- (2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).
- (3) Number of persons listed pursuant to subdivision (a).
- (4) Statistical information concerning prosecutions of persons for misuse of the "900" telephone number program, including the outcomes of those prosecutions.
- (5) A summary of the success of the "900" telephone number based upon selected factors.

(k) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

(l) No later than December 31, 1998, the Department of Justice shall prepare an informational pamphlet that shall be mailed to any member of the public who makes an inquiry using the "900" telephone number required by this section and who provides an address. The pamphlet shall provide basic information concerning appropriate steps parents, guardians, and other responsible adults can take to ensure a child is safe from a suspected child molester, including, but not limited to, how to identify suspicious activity by an adult,

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common facts and myths about child molesters, and how to obtain additional help and information. A notice to callers to the "900" telephone number that they will receive the pamphlet, if an address is provided, shall be included in the preamble required by this section.

(m) This section shall remain operative only until January 1, 2001, and as of that date is repealed unless a later enacted statute, which becomes effective on or before that date, deletes or extends that date.

(Added by Stats.1994, c. 867 (A.B.2500), § 4, operative July 1, 1995. Amended by Stats.1995, c. 85 (A.B.173), § 2; Stats.1995, c. 840 (S.B.295), § 3; Stats.1996, c. 908 (A.B.1562), § 3, eff. Sept. 25, 1996; Stats.1997, c. 17 (S.B.947), § 97; Stats.1997, c. 817 (A.B.59), § 4; Stats.1997, c. 819 (S.B.314), § 2; Stats.1997, c. 821 (A.B.290), § 4, eff. Oct. 9, 1997; Stats.1997, c. 822 (S.B.1078), § 1.7; Stats.1998, c. 485, (A.B.2803), § 130; Stats.1998, c. 550 (A.B.2799), § 1; Stats.1998, c. 929 (A.B.1745), § 2.5.)

Repeal

This section is repealed by its own terms on Jan. 1, 2001.

Historical and Statutory Notes

Sections 1 and 7 of Stats.1994, c. 867 (A.B. 2500), provide:

"Section 1. This bill shall be known and be cited as the Child Protective Act of 1994."

"Sec. 7. This act shall become operative only if Assembly Bill 3026 [Stats.1994, c. 875] of the 1993-94 Regular Session is enacted and becomes effective on or before January 1, 1995."

The 1995 amendment by c. 840, in subd. (a)(1), deleted "or" following "minor," and inserted "of Section 207, subdivision (b)" following "subdivision (b)" and "kidnapping, as punishable pursuant to subdivision (d) of Section 208 if the victim is a minor," following "Section 647.6," and in the second paragraph of subd. (f)(1)(B), substituted "Sections 1522.01 and 1596.871" for "Sections 1596.871 and 1597.81".

Amendment of this section by § 3.1 of Stats. 1995, c. 840 (S.B.295), failed to become operative under the provisions of § 6 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1996 amendment rewrote the section which had read:

"(a)(1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of Section 261 if the victim is a minor, Section 266 or 267, subdivision (b) of Section 207, subdivision (b) or (c) of Section 286, Section 288, paragraph (2) of subdivision (b) or subdivision (c) of Section 288a, Section 288.5, subdivision (i) or (j) of Section 289, Section 647.6, kidnap-

ping, as punishable pursuant to subdivision (d) of Section 208 if the victim is a minor, or the statutory predecessor of any of these offenses. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraphs (6) and (7) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5.

"(2) The information shall include the names of these persons categorized by community of residence and ZIP Code. The information shall include a physical description and criminal history and the address of these persons.

"(3) The department shall operate a '900' telephone number that members of the public may call and inquire whether a named individual is listed among those described in this subdivision. The caller shall furnish his or her first name, middle initial, and last name. The department shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the information described in paragraph (2), except the department shall not disclose the address or criminal history of a person listed, except to describe the specific crimes for which the registrant was required to register. The department shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (A) an exact street address, including apartment number, social security number, California driver's license or identification number, or birth date along with additional information that may include any of the following: name, hair color, eye color, height, weight, distinctive markings, ethnicity; or (B) any combination of at least six of the above listed charac-

teristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, a seventh identifying characteristic shall be provided. Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded by the department.

"(4)(A) The income from the operation of the '900' number shall be deposited in the Sexual Predator Public Information Account, which is hereby established within the Department of Justice for the purpose of the implementation of this section by the Department of Justice, including all actual and reasonable costs related to establishing and maintaining the information described in subdivision (a) and the subdirectory described in this subdivision.

"(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the '900' telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of the act adding this section, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

"(C) When the '900' number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide the following information:

"(i) Notice that the caller's telephone number will be recorded.

"(ii) The charges for use of the '900' number.

"(iii) Notice that the caller is required to identify himself or herself to the operator.

"(iv) Notice that the caller is required to be 18 years of age or older.

"(v) A warning that it is illegal to use information obtained through the '900' number, to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.

"(vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, or address or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.

"(vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.

"(viii) A statement that the caller should have a reasonable suspicion that a child is at risk.

"(D) The Department of Justice shall expend no more than six hundred thousand dollars

(\$600,000) per year from any moneys appropriated by the Legislature from the account.

"(b)(1) The Department of Justice shall maintain a subdirectory of persons described in subdivision (a) who are deemed by the department to be sexual habitual offenders and a threat to the public safety. The subdirectory shall include a photograph of the offender along with the following information, if available: name, physical description, age, and distinctive markings. The subdirectory shall not include the exact address or the criminal history of the person listed, except to describe the specific crimes for which the registrant was required to register.

"(2) The subdirectory shall be organized by county and ZIP Code.

"(3) A copy of the subdirectory shall annually be distributed to the offices of county sheriffs and police departments for purposes of public access.

"(4) County sheriff's and police departments may require that a person express an articulable purpose in order to have access to the subdirectory.

"(5) Any information identifying the victim by name, birthdate, address, or relation to the registrant shall be excluded from the subdirectory distributed for purposes of public access.

"(c)(1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

"(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

"(d) Any person who makes a photocopy of any part of the subdirectory of sexual habitual offenders is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed six months or by a fine not exceeding one thousand dollars (\$1,000) or by both. This subdivision shall not apply to a law enforcement officer who makes a photocopy as part of his or her official duties in the course of a criminal investigation or court case.

"(e) Unauthorized removal of the subdirectory of sexual habitual offenders from the offices of county sheriffs or any police department is a misdemeanor, punishable by imprisonment in the county jail not to exceed one year or by a fine not exceeding one thousand dollars (\$1,000), or by both.

"(f)(1) A person is authorized to use information disclosed pursuant to this section only to

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protect a child at risk. Authorized use includes, but is not limited to, either of the following:

"(A) A person in a position of authority or special trust who by reason of that position is able to exercise undue influence over a minor. A position of authority includes, but is not limited to, a natural parent, adoptive parent, step-parent, foster parent, relative, household member, adult youth leader, recreational director who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, or employer.

"(B) A person possessing a license or holding an employment or volunteer position with supervisory or disciplinary power over a minor or any person under his or her care, a person who supervises a slumber party, or a babysitter.

"This act shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

"(2) Except as authorized under another provision of law, use of any of the following information disclosed pursuant to this section is prohibited:

"(A) Health insurance.

"(B) Insurance.

"(C) Loans.

"(D) Credit.

"(E) Employment, except as specified in paragraph (1) of subdivision (F).

"(F) Education, scholarships, or fellowships.

"(G) Housing or accommodations.

"(H) Benefits, privileges, or services provided by any business establishment.

"(3)(A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) of subdivision (F) or in violation of paragraph (2) of subdivision (F) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

"(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the '900' number in violation of paragraph (2) of subdivision (F), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is au-

thorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

"(g) This section shall not be deemed to authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

"(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the '900' telephone number required by paragraph (3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

"(1) Number of calls received.

"(2) Amount of income earned per year through operation of the '900' telephone number.

"(3) A detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section.

"(4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

"(5) Number of persons listed pursuant to subdivision (a).

"(6) A summary of the success of the '900' telephone number program based upon selected factors.

"(i) The '900' telephone number program authorized by this section shall terminate operation on January 1, 1998.

"(j) This section shall become operative on July 1, 1995, and shall become inoperative on January 1, 1999, and as of that date is repealed unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed."

Legislative findings and declarations relating to Stats.1996, c. 908 (A.B.1562), see Historical and Statutory Notes under Penal Code § 290.

Section 1 of Stats.1996, c. 981 (A.B.2017), provides:

"It is the intent of the Legislature that the Department of Justice continuously review for accuracy the information required to be compiled by Section 290.4 of the Penal Code ac-

ording to the requirements set forth in that section."

Stats.1997, c. 822, rewrote subd. (a)(1); in subd. (c), in the second paragraph, inserted "that imprisonment and fine"; in subd. (d), substituted "by both imprisonment and fine" for "both"; deleted subd. (i); redesignated subds. (j) to (l) as subds. (i) to (k); inserted a new subd. (l), relating to preparation of an informational pamphlet by the Department of Justice; and rewrote subd. (m). Prior to amendment, par. (1) of subd. (a) and subds. (i) and (m) read:

"(a)(1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of subdivision (b) of Section 207; kidnapping, as punishable pursuant to subdivision (d) of Section 208; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that the offense is a felony; Section 266c, provided that the offense is a felony; Section 266j; Section 267; paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), (h) of Section 289, provided that the offense is a felony; subdivision (i) or (j) of Section 289; Section 647.6; or the statutory predecessor of any of these offenses or any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in this section. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraph (6) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5."

"(i) The '900' telephone number program authorized by this section shall terminate operation on January 1, 1998."

"(m) This section shall become operative on July 1, 1995, and shall become inoperative on January 1, 1999, and as of that date is repealed unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed."

Under the provisions of § 2 of Stats.1997, c. 822, the 1997 amendments of this section by c. 817 (A.B.59), c. 819 (S.B.314), c. 821 (A.B.290) and c. 822 (S.B.1078) were given effect first in the form set forth in § 4 of c. 821 and upon the

operative date of c. 822, then given effect and incorporated in the form set forth in § 1.7 of c. 822.

An amendment of this section by §§ 1 to 1.6 of Stats.1997, c. 822, failed to become operative under the provisions of § 2 of that Act.

Stats.1997, c. 821, in subd. (a), rewrote par. (1), in par. (2), substituted "the person" for "these persons", in par. (4)(A), deleted ", shall sign a register, which the law enforcement agency is required to maintain, of persons applying to view the CD-ROM or other electronic medium," following "18 years of age" and inserted "designated" following "file in the", in par. (5), inserted "telephone" prior to "number"; in subd. (c), in the second paragraph, inserted the last sentence relating to copying information by handwriting; in subd. (e)(2), substituted "information, for purposes relating to any of the following, and that is disclosed" for "of the following information disclosed"; in subd. (e)(3)(B), inserted "telephone" prior to "number"; rewrote subd. (j); and in subd. (k), in the introductory paragraph, substituted "Chapter 908 of the Statutes of 1996" for "Assembly Bill 1562 of the 1995-96 Regular Session of the Legislature". Prior to amendment, par. (1) of subd. (a) and subd. (j) read:

"(a)(1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of subdivision (b) of Section 207; kidnapping, as punishable pursuant to subdivision (d) of Section 208; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that the offense is a felony; Section 266c, provided that the offense is a felony; Section 267; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), (h), provided that the offense is a felony, (i), or (j) of Section 289; Section 647.6; or the statutory predecessor of any of these offenses. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraphs (6) and (7) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5."

"(j) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this section."

Amendment of this section by §§ 4.1 to 4.7 of Stats.1997, c. 821 (A.B.290), failed to become

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operative under the provisions of § 6 of that Act.

Amendment of this section by §§ 2.1 to 2.7 of Stats.1997, c. 819 (S.B.314), failed to become operative under the provisions of § 4 of that Act.

Amendment of this section by §§ 4.1 to 4.7 of Stats.1997, c. 817 (A.B.59), failed to become operative under the provisions of § 15 of that Act.

Stats.1997, c. 17, made nonsubstantive changes to maintain the code.

Subordination of legislation by Stats.1997, c. 17 (S.B.947), to other 1997 legislation, see Historical and Statutory Notes under Business and Professions Code § 30.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Law Review and Journal Commentaries

Review of selected 1995 California legislation. Pac.L.J. 349 (1996).

Review of selected 1996 California legislation. 28 Pac.L.J. 633 (1997).

Library References

Treatises and Practice Aids

Witkin & Epstein, Criminal Law (2d ed) §§ 1417, 1483D.

§ 290.5

Subordination of legislation by Stats.1998, c. 485 (A.B.2803), to other 1998 legislation, see Historical and Statutory Notes under Business and Professions Code § 4840.

Stats.1998, c. 929, in subd. (a), inserted "Section 269" following "Section 267;" in subd. (a)(4)(A), inserted "update and" preceding "distribute" and substituted "monthly" for "quarterly"; in subd. (f), inserted "or local" following "state"; and made nonsubstantive changes.

Under the provisions of § 4 of Stats.1998, c. 929, the 1998 amendments of this section by c. 550 (A.B.2799) and c. 929 (A.B.1745) were given effect and incorporated in the form set forth in § 2.5 of c. 929.

An amendment of this section by § 2 of Stats. 1998, c. 929, failed to become operative under the provisions of § 4 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

§ 290.5. Pardon or certificate of rehabilitation; relief from duty to register

(a) A person required to register under Section 290 may initiate a proceeding under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, and, except persons described in paragraph (1) of subdivision (a) of Section 290.4 or paragraph (2) of subdivision (g) of Section 290, upon obtaining a certificate of rehabilitation, shall be relieved of any further duty to register under Section 290 if not in custody, on parole, or on probation. This certificate shall not relieve persons described in paragraph (1) of subdivision (a) of Section 290.4 or paragraph (2) of subdivision (g) of Section 290 of the duty to register under Section 290 and shall not relieve a petitioner of the duty to register under Section 290 for any offense subject to that section of which he or she is convicted in the future.

(b)(1) Except as provided in paragraphs (2) and (3), a person described in paragraph (1) of subdivision (a) of Section 290.4 or paragraph (2) of subdivision (g) of Section 290 shall not be relieved of the duty to register until that person has obtained a full pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

(2) This subdivision does not apply to misdemeanor violations of Section 47.6.

(3) The court, upon granting a petition for a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part

Exhibit 2

DECLARATION OF RICHARD L. ROGERS

Claim of the County of Tuolumne

RICHARD L. ROGERS makes the following declaration and statement under oath:

I am the Sheriff for the County of Tuolumne. In my capacity as Sheriff, I am responsible to plan, direct, manage, coordinate and oversee activities related to law enforcement and the administration thereof.

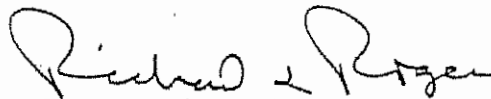
I am familiar with the provisions and requirements of the Government Code and the Penal Code sections included in the test claim which required the County to provide additional information to the public, which may include the identities and locations of these sex offenders, via electronic medium and to comply with increased reporting requirements.

I am the Tuolumne County Sheriff and presently direct the County's program to comply with the statutes included in the County's Test Claim. I have direct knowledge of Sheriff's Department costs incurred to comply with this state mandate for which the County has not been reimbursed by any federal, state or local government agency, and for which it cannot otherwise obtain reimbursement. The cost information presented in the test claim is a fair and accurate representation of the costs incurred by the County.

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 7th day of July, 1999, at Sonora, California.



Richard L. Rogers, Sheriff

Exhibit 3

Assembly Bill No. 1562

CHAPTER 908

An act to amend Sections 290 and 290.4 of the Penal Code, relating to sex offenders, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1996. Filed
with Secretary of State September 25, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1562, Alby. Sex offenders: disclosure by law enforcement officers.

(1) Existing law imposes registration requirements on specified sex offenders.

This bill would authorize law enforcement officers to disclose information regarding these offenders that is necessary to protect the public, which may include the identities and locations of these offenders, under specified circumstances.

(2) Existing law requires the Department of Justice to continually compile specified information regarding persons required to register as sex offenders.

Among other things, this bill would require the department, on or before July 1, 1997, to provide a CD-ROM or other electronic medium containing this information to specified law enforcement agencies. These law enforcement agencies would be required to make the CD-ROM or other electronic medium available for public viewing. Unauthorized removal or destruction of the CD-ROM or other electronic medium would be a misdemeanor. By increasing the duties of local officials and creating a new crime, this bill would impose a state-mandated local program.

(3) Existing law requires the Department of Justice to operate a "900" telephone number that members of the public may call to inquire whether a named individual is included among those described by the above provision.

This bill would revise these provisions and would require the Department of Justice to report to the Legislature, on or before July 1, 2000, concerning the effects of these changes to the "900" telephone number system made by this bill.

(4) This bill would also incorporate additional changes to Section 290 of the Penal Code proposed by AB 401, to be operative if AB 401 and this bill are both enacted on or before January 1, 1997, and this bill is enacted last.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the

state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(6) The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) Sex offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is a paramount public interest.

(b) It is a compelling and necessary public interest that the public have information concerning persons convicted of offenses involving unlawful sexual behavior collected pursuant to Sections 290 and 290.4 of the Penal Code to allow members of the public to adequately protect themselves and their children from these persons.

(c) Persons convicted of these offenses involving unlawful sexual behavior have a reduced expectation of privacy because of the public's interest in public safety.

(d) In balancing the offenders' due process and other rights against the interests of public security, the Legislature finds that releasing information about sex offenders under the circumstances specified in this act will further the primary government interest of protecting vulnerable populations from potential harm.

(e) The registration of sex offenders, the public release of specified information about certain sex offenders pursuant to Sections 290 and 290.4 of the Penal Code, and public notice of the presence of certain high-risk sexual offenders in communities will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems that deal with these offenders.

(f) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of sex offenders, for the public release of specified information regarding certain more serious sex offenders, and for community notification regarding high-risk sex offenders who are about to be released from custody or who already reside in communities in this state. This policy of authorizing the release of necessary and relevant information

about serious and high-risk sex offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive.

(g) The Legislature also declares, however, that in making information available about certain sex offenders to the public, it does not intend that the information be used to inflict retribution or additional punishment on any such person convicted of a sexual offense. While the Legislature is aware of the possibility of misuse, it finds that the dangers to the public of nondisclosure far outweigh the risk of possible misuse of the information. The Legislature is further aware of studies in Oregon and Washington indicating that community notification laws and public release of similar information in those states have resulted in little criminal misuse of the information and that the enhancement to public safety has been significant.

SEC. 2. Section 290 of the Penal Code is amended to read:

290. (a) (1) Every person described in paragraph (2), for the rest of his or her life while residing in California, shall be required to register with the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities, within 14 days of coming into any city, county, or city and county in which he or she temporarily resides or is domiciled for that length of time. The person shall be required annually thereafter, within 10 days of his or her birthday, to update his or her registration with the entities described in this paragraph, including, verifying his or her address on a form as may be required by the Department of Justice.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of subdivision (b) of Section 207, kidnapping, as punishable pursuant to subdivision (d) of Section 208, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261 or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, 266j, 267, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (d) of Section 647, subdivision 1 or 2 of Section 314, any offense involving lewd and lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any federal or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A).

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) Any person who, after August 1, 1950, is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the

Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offenses described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who, on or after January 1, 1995, is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraphs (3) and (4), shall be subject to registration under the procedures of this section.

(3) The following offenses shall apply for the purpose of this subdivision:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, subdivision (a) of Section 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208.

(C) Any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(4) Any person who is discharged or paroled from the Department of the Youth Authority to the custody of which he or she

was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(5) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(6) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) The registration shall consist of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by or registered in the name of the person.

(2) Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) If any person who is required to register pursuant to this section changes his or her residence address, the person shall inform, in writing within 10 days, the law enforcement agency or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Notwithstanding paragraph (1), any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220, any violation of Section 264.1 or 289 under

Section 220, any violation of Section 261, any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, any violation of Section 264.1, 286, 288, 288a, 288.5, or 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208, and who is required to register under this section who willfully violates this section is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(3) Any person required to register under this section based on a felony conviction who willfully violates this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a felony and shall be punished by imprisonment in the state prison for 16 months or two or three years.

A person punished pursuant to this paragraph or paragraph (2) shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

If the person has been sentenced to a term of imprisonment in the state prison, the penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(l) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 30 days.

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (2) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(3) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(4) For purposes of this section, "likely to encounter" means (A) that the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis, and (B) the types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(5) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(6) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(7) Law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a law enforcement agency may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense for which registration is required under paragraph (2) of subdivision (a) and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, 203, 206, 207, 236, provided that the offense is a felony, subdivision (a) of Section 273a, 273d, or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, 314, 459, provided the offense is of the first degree, 597, 646.9, subdivision (d), (h), or (i) of Section 647, 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that

he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Law enforcement agency" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any state university, state college, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other law enforcement agency upon request, the following information regarding each identified high-risk sexual offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any law enforcement agency to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(o) Agencies disseminating information to the public pursuant to subdivision (a) shall maintain records of the offender and the means and dates of dissemination for a minimum of five years.

(p) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this section.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

SEC. 2.5. Section 290 of the Penal Code is amended to read:

290. (a) (1) Every person described in paragraph (2), for the rest of his or her life while residing in California, shall be required to register with the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities, within five working days of coming into any city, county, or city and county in which he or she temporarily resides or is domiciled for that length of time. The person shall be required annually thereafter, within five working days of his or her birthday, to update his or her registration with the entities described in this paragraph, including, verifying his or her name and address on a form as may be required by the Department of Justice.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of subdivision (b) of Section 207, kidnapping, as punishable pursuant to subdivision (d) of Section 208, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261 or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, 266j, 267, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (d) of Section 647, subdivision 1 or 2 of Section 314, any offense involving lewd and lascivious conduct under Section 272, or any felony violation of Section 288.2;

or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any federal or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A).

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) Any person who, after August 1, 1950, is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person

expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section. Any person who, on or after January, 1997, has been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration, upon completion of formal probation and subject to paragraphs (8), (9), and (10), under the procedures of this section regardless of the disposition of the case. Notice of this requirement shall be given to the person at the offender disposition hearing.

(2) Any person who, on or after January 1, 1995, is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraphs (3) and (4), shall be subject to registration under the procedures of this section.

Any juvenile who, on or after January 1, 1996, is found guilty of an offense in another state, which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the

procedures of this section regardless of the disposition of the case, subject to paragraphs (8), (9), and (10).

(3) The following offenses shall apply for the purpose of this subdivision:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, subdivision (a) of Section 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208.

(C) Any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(4) Any person who is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(5) Prior to discharge or parole from the Department of the Youth Authority, or at the offender disposition hearing, as provided in this subdivision, any person who is subject to registration shall be informed of the duty to register, and the possible exemption from registration, if applicable, under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(6) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(7) A person required to register pursuant to this subdivision, who has not been committed by the juvenile court to the custody of the Department of the Youth Authority, shall be required to register only until he or she attains the age of 25 years.

(8) Subject to the conditions set forth in paragraph (9), the juvenile court may exempt from the registration requirements of this subdivision a person who has not been committed to the custody of

the Department of the Youth Authority if the court, after considering the recommendations of the district attorney, the probation department, the person seeking the exemption, any treatment program or clinical provider that has treated or assessed the person seeking the exemption, and any other person deemed by the court to have information relevant to its decision, finds all of the following:

(A) The person poses no substantial risk of repeating the sex offense for which he or she was adjudicated a ward of the court, or of committing any sex offense, as evidenced by any of the following:

(i) The successful completion of a sex offender treatment program.

(ii) Corroboration of the person's rehabilitation as a sex offender by means of a clinical, psychiatric, or psychological evaluation.

(iii) Any other relevant evidence.

(B) The exemption would facilitate the eligibility or competitiveness of the person seeking the exemption to be considered for employment, educational, or vocational opportunities for which the person otherwise would qualify and that the person otherwise would pursue, including, but not limited to, the United States military or the Job Corps.

(C) The person has not been adjudged to have committed, nor been convicted of committing, any sexual or violent offense subsequent to being adjudged a ward of the court for committing any offense for which the person is subject to the registration requirements of this subdivision.

(9) Any exemption granted pursuant to paragraph (8) shall be conditioned upon the exempted person's acceptance into and continuing participation in an employment, educational, or vocational opportunity pursuant to subparagraph (B) of paragraph (8), and may be revoked by the juvenile court, upon notice and a hearing, if the person is not accepted into, is terminated from, or otherwise is not participating in, the opportunity, or if the person is adjudged to have committed or been convicted of a sex offense subsequent to having been exempted from registration pursuant to this subdivision.

(10) Any person granted an exemption pursuant to this subdivision shall notify the juvenile court within 10 days if the person is not accepted into, is terminated from, or otherwise is not participating in, the employment, educational, or vocational program upon which an exemption to the registration requirements of this subdivision was based. Any person whose exemption has been revoked for reasons beyond their control, and not as a result of misconduct, may reapply for an extension based on the conditions set forth in this subdivision.

(e) (1) The registration shall consist of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by or registered in the name of the person.

(2) Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) If any person who is required to register pursuant to this section changes his or her name or residence address, the person shall inform, in writing within five working days, the law enforcement agency or agencies with whom he or she last registered of the new name or address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Notwithstanding paragraph (1), any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220, any violation of Section 264.1 or 289 under Section 220, any violation of Section 261, any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, any violation of Section 264.1, 286, 288, 288a, 288.5, or 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208, and who is required to register under this section who willfully violates this section is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(3) Any person required to register under this section based on a felony conviction who willfully violates this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a felony and shall be punished by imprisonment in the state prison for 16 months or two or three years.

A person punished pursuant to this paragraph or paragraph (2) shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

If the person has been sentenced to a term of imprisonment in the state prison, the penalty described in this paragraph shall apply

whether or not the person has been released on parole or has been discharged from parole.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(l) (1) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 30 days.

(2) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (2) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(3) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of

the public to protect themselves and their children from sex offenders.

(4) For purposes of this section, "likely to encounter" means (A) that the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis, and (B) the types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(5) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(6) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(7) Law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a law enforcement agency may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense for which registration is required under paragraph (2) of subdivision (a) and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, 203, 206, 207, 236, provided that

the offense is a felony, subdivision (a) of Section 273a, 273d, or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, 314, 459, provided the offense is of the first degree, 597, 646.9, subdivision (d), (h), or (i) of Section 647, 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Law enforcement agency" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of

Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any state university, state college, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other law enforcement agency upon request, the following information regarding each identified high-risk sexual offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any law enforcement agency to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(c) Agencies disseminating information to the public pursuant to subdivision (a) shall maintain records of the offender and the means and dates of dissemination for a minimum of five years.

(p) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this section.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

SEC. 3. Section 290.4 of the Penal Code is amended to read:

290.4. (a) (1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of subdivision (b) of Section 207; kidnapping, as punishable pursuant to subdivision (d) of Section 208; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that the offense is a felony; Section 266c, provided that the offense is a felony; Section 267; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), (h), provided that the offense is a felony, (i), or (j) of Section 289; Section 647.6; or the statutory predecessor of any of these offenses. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraphs (6) and (7) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5.

(2) The information shall be categorized by community of residence and ZIP Code. The information shall include the names and known aliases of these persons, photograph, a physical description, gender, race, date of birth, the criminal history, and the address, including ZIP Code, in which the person resides, and any other information that the Department of Justice deems relevant, not including information that would identify the victim.

(3) The department shall operate a "900" telephone number that members of the public may call and inquire whether a named individual is listed among those described in this subdivision. The caller shall furnish his or her first name, middle initial, and last name. The department shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the information described in paragraph (2), except the department shall not disclose the street address or criminal history of a person listed, except to disclose the ZIP Code area in which the person resides and to describe the specific crimes for which the registrant was required to register. The department shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (A) an exact street address, including apartment number, social security number, California driver's license or identification number, or birth date along with additional information that may include any of the following: name, hair color, eye color, height, weight, distinctive markings, ethnicity; or (B) any combination of at least six of the above listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, a seventh identifying characteristic shall be

provided. Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded by the department.

(4) (A) On or before July 1, 1997, the department shall provide a CD-ROM or other electronic medium containing the information described in paragraph (2), except the person's street address and criminal history other than the specific crimes for which the person was required to register, for all persons described in paragraph (1) of subdivision (a), and shall distribute the CD-ROM or other electronic medium on a quarterly basis to the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (n) of Section 290. These law enforcement agencies may obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee. The Department of Justice, the sheriff's departments, and the municipal police departments of cities with a population of more than 200,000 shall make, and the other law enforcement agencies may make the CD-ROM or other electronic medium available for viewing by the public in accordance with the following. The agency may require that a person applying to view the CD-ROM or other electronic medium express an articulable purpose in order to have access thereto. The applicant shall provide identification in the form of a California driver's license or California identification card, showing the applicant to be at least 18 years of age, shall sign a register, which the law enforcement agency is required to maintain, of persons applying to view the CD-ROM or other electronic medium, and shall sign a statement on a form provided by the Department of Justice, stating that the applicant is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders, and he or she understands it is unlawful to use information obtained from the CD-ROM or other electronic medium to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the law enforcement agency's office.

(B) The records of persons requesting to view the CD-ROM or other electronic medium are confidential, except that a copy of the applications requesting to view the CD-ROM or other electronic medium may be disclosed to law enforcement agencies for law enforcement purposes.

(C) Any information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the CD-ROM or other electronic medium.

(5) (A) The income from the operation of the "900" number shall be deposited in the Sexual Predator Public Information Account, which is hereby established within the Department of Justice for the purpose of the implementation of this section by the Department of Justice, including all actual and reasonable costs related to establishing and maintaining the information described in subdivision (a) and the CD-ROM or other electronic medium described in this subdivision.

(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the "900" telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of the act adding this section, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

(C) When the "900" number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide the following information:

- (i) Notice that the caller's telephone number will be recorded.
- (ii) The charges for use of the "900" number.
- (iii) Notice that the caller is required to identify himself or herself to the operator.
- (iv) Notice that the caller is required to be 18 years of age or older.
- (v) A warning that it is illegal to use information obtained through the "900" number to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.
- (vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, or address or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.
- (vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.
- (viii) A statement that the caller should have a reasonable suspicion that a person is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars (\$600,000) per year from any moneys appropriated by the Legislature from the account.

(b) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be

subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(c) The record of the compilation of offender information on each CD-ROM or other electronic medium distributed pursuant to this section shall be used only for law enforcement purposes and the public safety purposes specified in this section and Section 290. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section or Section 290, or any other statute expressly authorizing it.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed six months or by a fine not exceeding one thousand dollars (\$1,000), or by both. This subdivision shall not apply to a law enforcement officer who makes a copy as part of his or her official duties in the course of a criminal investigation, court case, or as otherwise authorized by subdivision (n) of Section 290.

Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(d) Unauthorized removal or destruction of the CD-ROM or other electronic medium from the offices of any law enforcement agency is a misdemeanor, punishable by imprisonment in a county jail not to exceed one year or by a fine not exceeding one thousand dollars (\$1,000), or both.

(e) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any of the following information disclosed pursuant to this section is prohibited:

- (A) Health insurance.
- (B) Insurance.
- (C) Loans.
- (D) Credit.
- (E) Employment.
- (F) Education, scholarships, or fellowships.
- (G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) of subdivision (e) or in violation of paragraph (2) of subdivision (e) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the "900" number in violation of paragraph (2) of subdivision (e), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(f) This section shall not be deemed to authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

(g) Community notification shall be governed by subdivisions (m) and (n) of Section 290.

(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the "900" telephone number required by paragraph (3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

- (1) Number of calls received.
- (2) Amount of income earned per year through operation of the "900" telephone number.
- (3) A detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section.
- (4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).
- (5) Number of persons listed pursuant to subdivision (a).
- (6) A summary of the success of the "900" telephone number program based upon selected factors.

(i) The "900" telephone number program authorized by this section shall terminate operation on January 1, 1998.

(j) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this section.

(k) On or before July 1, 2000, the Department of Justice shall make a report to the Legislature concerning the changes to the operation of the "900" telephone number program made by the amendments to this section by Assembly Bill 1562 of the 1995-96 Regular Session of the Legislature. The report shall include all of the following:

(1) Number of calls received by county.

(2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(3) Number of persons listed pursuant to subdivision (a).

(4) Statistical information concerning prosecutions of persons for misuse of the "900" telephone number program, including the outcomes of those prosecutions.

(5) A summary of the success of the "900" telephone number based upon selected factors.

(l) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

(m) This section shall become operative on July 1, 1995, and shall become inoperative on January 1, 1999, and as of that date is repealed unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 401. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 401, in which case Section 290 of the Penal Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of AB 401, at which time Section 2.5 of this bill shall become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or

changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to authorize law enforcement officers to disclose the identities and locations of sex offenders to preserve the public safety, it is necessary for this act to take effect immediately.

Exhibit 4

Senate Bill No. 1378

CHAPTER 909

An act to amend Section 290 of the Penal Code, relating to sex offenders.

[Approved by Governor September 25, 1996. Filed
with Secretary of State September 25, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1378, Peace. Sex offenders.

(1) Existing law generally requires specified sex offenders to register with local law enforcement officials within 14 days of coming into a city, county, or city and county in which the offender temporarily resides or is domiciled for that length of time. Specified juvenile sex offenders who have been discharged or paroled from the Department of the Youth Authority, or its equivalent in another state, are required to register under these provisions. Failure to register results in the imposition of criminal penalties.

This bill would reduce the registration period from 14 days to 5 working days of the offender's coming into a city, county, or city and county and would reduce the annual updating period from 10 days to 5 working days of his or her birthday. This bill, in addition, would make these provisions applicable to name changes. This bill would impose a state-mandated local program by expanding the scope of an existing crime and increasing the duties of local agencies relating to forwarding name changes to the Department of Justice.

(2) Existing law requires the registering agencies to notify persons subject to this requirement that previous amendments to these provisions reduced the registration period.

This bill would require the registering agencies to notify persons subject to registration prior to January 1, 1997, of the reduction of the registration period from 14 to 5 working days. By requiring local agencies to give this notice, this bill would impose a state-mandated local program.

(3) The bill would also incorporate amendments to Section 290 of the Penal Code proposed by AB 1562 to become operative only if both bills are enacted and become effective on or before January 1, 1997, each bill amends Section 290 of the Penal Code, and this bill is enacted after AB 1562.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000

statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) (1) Every person described in paragraph (2), for the rest of his or her life while residing in California, shall be required to register with the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities, within five working days of coming into any city, county, or city and county in which he or she temporarily resides or is domiciled for that length of time. The person shall be required annually thereafter, within five working days of his or her birthday, to update his or her registration with the entities described in this paragraph, including, verifying his or her name and address on a form as may be required by the Department of Justice.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of subdivision (b) of Section 207, kidnapping, as punishable pursuant to subdivision (d) of Section 208, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261 or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, 266j, 267, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (d) of Section 647, subdivision 1 or 2 of Section 314, any offense involving lewd and lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any federal or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A).

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) Any person who, after August 1, 1950, is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction which makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency which prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. All forms shall, if the conviction which makes the person subject to this section is a felony conviction, be transmitted within those times in order to be received by the local

law enforcement agency or agencies and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who, on or after January 1, 1995, is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraphs (3) and (4), shall be subject to registration under the procedures of this section.

(3) The following offenses shall apply for the purpose of this subdivision:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, subdivision (a) of Section 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208.

(C) Any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(4) Any person who is discharged or paroled from the Department of the Youth Authority to the custody of which he or she

was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(5) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(6) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) The registration shall consist of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by or registered in the name of the person.

(2) Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) If any person who is required to register pursuant to this section changes his or her name or residence address, the person shall inform, in writing within five working days, the law enforcement agency or agencies with whom he or she last registered of the new name or address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Notwithstanding paragraph (1), any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220, any violation of Section 264.1 or 289 under

Section 220, any violation of Section 261, any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, any violation of Section 264.1, 286, 288, 288a, 288.5, or 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208, and who is required to register under this section who willfully violates this section is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(3) Any person required to register under this section based on a felony conviction who willfully violates this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a felony and shall be punished by imprisonment in the state prison for 16 months or two or three years.

A person punished pursuant to this paragraph or paragraph (2) shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

If the person has been sentenced to a term of imprisonment in the state prison, the penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(l) (1) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 30 days.

(2) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

SEC. 2. Section 290 of the Penal Code is amended to read:

290. (a) (1) Every person described in paragraph (2), for the rest of his or her life while residing in California, shall be required to register with the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities, within five working days of coming into any city, county, or city and county in which he or she temporarily resides or is domiciled for that length of time. The person shall be required annually thereafter, within five working days of his or her birthday, to update his or her registration with the entities described in this paragraph, including, verifying his or her name and address on a form as may be required by the Department of Justice.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of subdivision (b) of Section 207, kidnapping, as punishable pursuant to subdivision (d) of Section 208, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (5) of subdivision (a) of Section 261 or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, 266j, 267, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (d) of Section 647, subdivision 1 or 2 of Section 314, any offense involving lewd and lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any federal or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A).

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) Any person who, after August 1, 1950, is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been

explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction which makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency which prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who, on or after January 1, 1995, is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraphs (3) and (4), shall be subject to registration under the procedures of this section.

(3) The following offenses shall apply for the purpose of this subdivision:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, subdivision (a) of Section 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208.

(C) Any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(4) Any person who is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(5) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(6) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) The registration shall consist of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by or registered in the name of the person.

(2) Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) If any person who is required to register pursuant to this section changes his or her name or residence address, the person shall inform, in writing within five working days, the law enforcement agency or agencies with whom he or she last registered of the new name or address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Notwithstanding paragraph (1), any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220, any violation of Section 264.1 or 289 under Section 220, any violation of Section 261, any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, any violation of Section 264.1, 286, 288, 288a, 288.5, or 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208, and who is required to register under this section who willfully violates this section is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(3) Any person required to register under this section based on a felony conviction who willfully violates this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a felony and shall be punished by imprisonment in the state prison for 16 months or two or three years.

A person punished pursuant to this paragraph or paragraph (2) shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

If the person has been sentenced to a term of imprisonment in the state prison, the penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be

served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(l) (1) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 30 days.

(2) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (2) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(3) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(4) For purposes of this section, "likely to encounter" means (A) that the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis, and (B) the types of interaction that ordinarily occur

at that location and other circumstances indicate that contact with the offender is reasonably probable.

(5) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(6) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(7) Law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a law enforcement agency may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(l) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense for which registration is required under paragraph (2) of subdivision (a) and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, 203, 206, 207, 236, provided that the offense is a felony, subdivision (a) of Section 273a, 273d, or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, 314, 459, provided the offense is of the first degree, 597, 646.9, subdivision (d), (h), or (i) of Section 647, 653m,

or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Law enforcement agency" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any state university, state college, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis

of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other law enforcement agency upon request, the following information regarding each identified high-risk sexual offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any law enforcement agency to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(o) Agencies disseminating information to the public pursuant to subdivision (a) shall maintain records of the offender and the means and dates of dissemination for a minimum of five years.

(p) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this section.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

SEC. 3. Section 2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill and AB 1562. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 1562, in which case Section 290 of the Penal Code, as amended by AB 1562, shall remain operative only until the operative date of this bill, at which time

Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

Exhibit 5

CHAPTER 17

An act to amend Sections 30, 1680, 2052.5, 2365, 3041.1, 3041.3, 7044.2, 9884, 10250.2, 17206, 24071.2, and 25662 of, and to amend and renumber Section 11018.11 of, the Business and Professions Code, to amend Sections 1365 and 1375 of, and to amend and renumber Sections 1861.607 and 1861.608 of, the Civil Code, to amend Section 1201 of the Commercial Code, to amend Sections 8450, 15301, 15320, 15327, 15356, 15357, 15359, 15359.2, 42238.145, 44254, 52335.9, 52487, and 76002 of, to amend and renumber the heading of Article 6 (commencing with Section 60350) of Chapter 2 of Part 33 of, and to repeal Section 87869 of, the Education Code, to amend Sections 2157 and 12106 of, and to repeal the heading of Division 0.5 of, the Elections Code, to amend and renumber the heading of Division 14 (commencing with Section 10100) of the Family Code, to amend Sections 17207, 21301, and 21304 of the Financial Code, to amend Sections 3332, 12648, 12815, 13144, and 46003.5 of the Food and Agricultural Code, to amend Sections 951, 8670.7, 8670.13.2, 8670.21, 11504, 15363.7, 15379.28, 30054, 30061, 30064, 50030, and 65850.2 of the Government Code, to amend Sections 1226, 1250.2, 1367, 1585, 11758.46, 13113, 19183, 19825, 19881, 25143.2, 25179.8, 25299.92, 25330.4, 25532, 25534, 25538, 25548.1, 33459.1, 33493.4, 34120, 41751, 44081, 44243.5, and 129885 of, to amend and renumber Sections 11527.3 and 27604 of, and to amend the heading of Article 11 (commencing with Section 25299.90) of Chapter 6.75 of Division 20 of, the Health and Safety Code, to amend Sections 742.33, 10123.13, 10145.3, 10164.2, 10509.963, and 10509.975 of the Insurance Code, to amend Sections 1777.5 and 6500 of the Labor Code, to amend Sections 186.2, 273.1, 290, 290.4, 311, 350, 831.5, 1295, 1529, 4415, 7500, 7501, 7515, 11106, 12033, 12071, 12072, 12078, 12084, and 12403.7 of, to amend the heading of Article 8 (commencing with Section 12800) of Chapter 6 of Title 2 of Part 4 of, and to repeal Sections 269, 312.6, 312.7, and 667.61 of, the Penal Code, to amend Sections 4576.1, 6817, 42010, 42350, 43210, and 43211 of, and to repeal Section 3493 of, the Public Resources Code, to amend Sections 368, 489.1, 740.4, 5322, and 125105 of the Public Utilities Code, to amend Sections 401.11, 2188.8, 2611.7, 4528, 10753, and 19141.6 of, to amend and renumber Sections 410.10 and 19442 of, to amend, repeal, and add Section 69.5 of, and to repeal Section 401.10 of, the Revenue and Taxation Code, to amend Sections 3016, 22651.2, and 40513 of the Vehicle Code, to amend Section 13399.3 of the Water Code, to amend Sections 207.1, 366.21, 5778, 7325, 11462, and 14490 of, and to repeal Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of, the Welfare and Institutions Code, and to amend Section 6 of Chapter 920 of the

Statutes of 1994, Section 5 of Chapter 76 of the Statutes of 1996, Section 1 of Chapter 663 of the Statutes of 1996, and Section 1 of Chapter 947 of the Statutes of 1996, relating to maintenance of the codes.

[Approved by Governor May 30, 1997. Filed with
Secretary of State May 30, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 947, Committee on Judiciary. Maintenance of the Codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would restate existing provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature for consideration during 1997, and would not make any substantive change in the law.

The people of the State of California do enact as follows:

SECTION 1. Section 30 of the Business and Professions Code is amended to read:

30. (a) Notwithstanding any other provision of law, any board, as defined in Section 22, the State Bar, and the Department of Real Estate shall, at the time of issuance or renewal of the license, require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to so provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license or for renewal of a license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number if the entity is a partnership or social security number for all others.

- (4) Type of license.
- (5) Effective date of license or renewal.
- (6) Expiration date of license.
- (7) Whether license is active or inactive, if known.
- (8) Whether license is new or renewal.

(e) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Department of Real Estate.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who, in the course of his or her employment or duty, has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except to the Franchise Tax Board as provided in this section, or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 11350.6 of the Welfare and Institutions Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

SEC. 2. Section 1680 of the Business and Professions Code is amended to read:

1680. Unprofessional conduct by a person licensed under this chapter is defined as, but is not limited to, any one of the following:

- (a) The obtaining of any fee by fraud or misrepresentation.
- (b) The employment, directly or indirectly, of any student or suspended or unlicensed dentist to practice dentistry as defined in this chapter.
- (c) The aiding or abetting of any unlicensed person to practice dentistry.
- (d) The aiding or abetting of a licensed person to practice dentistry unlawfully.
- (e) The committing of any act or acts of gross immorality substantially related to the practice of dentistry.
- (f) The use of any false, assumed, or fictitious name, either as an individual, firm, corporation, or otherwise, or any name other than the name under which he or she is licensed to practice, in advertising or in any other manner indicating that he or she is practicing or will practice dentistry, except that name specified in a valid permit issued pursuant to Section 1701.5.
- (g) The practice of accepting or receiving any commission or the rebating in any form or manner of fees for professional services, radiograms, prescriptions, or other services or articles supplied to patients.
- (h) The making use by the licensee or any agent of the licensee of any advertising statements of a character tending to deceive or mislead the public.
- (i) The advertising of either professional superiority or the advertising of performance of professional services in a superior manner. This subdivision does not prohibit advertising permitted by subdivision (h) of Section 651.
- (j) The employing or the making use of solicitors.
- (k) The advertising in violation of Section 651.
- (l) The advertising to guarantee any dental service, or to perform any dental operation painlessly. This subdivision does not prohibit advertising permitted by Section 651.
- (m) The violation of any of the provisions of law regulating the procurement, dispensing, or administration of dangerous drugs, as defined in Article 7 (commencing with Section 4211) of Chapter 9, or controlled substances, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.
- (n) The violation of any of the provisions of this division.
- (o) The permitting of any person to operate dental radiographic equipment who has not met the requirements of Section 1656.
- (p) The clearly excessive prescribing or administering of drugs or treatment, the clearly excessive use of diagnostic procedures, or the clearly excessive use of diagnostic or treatment facilities, as

determined by the customary practice and standards of the dental profession.

Any person who violates this subdivision is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than six hundred dollars (\$600), or by imprisonment for a term of not less than 60 days or more than 180 days, or by both a fine and imprisonment.

(q) The use of threats or harassment against any patient or licensee for providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with this chapter or to aid in that compliance.

(r) Suspension or revocation of a license issued, or other discipline imposed, by another state or territory on grounds that would be the basis of discipline in this state.

(s) The alteration of a patient's record with intent to deceive.

(t) Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession.

(u) The abandonment of the patient by the licensee, without written notice to the patient that treatment is to be discontinued and before the patient has ample opportunity to secure the services of another dentist and provided the health of the patient is not jeopardized.

(v) The willful misrepresentation of facts relating to a disciplinary action to the patients of a disciplined licensee.

(w) Use of fraud in the procurement of any license issued pursuant to this chapter.

(x) Any action or conduct that would have warranted the denial of the license.

(y) The aiding or abetting of a licensed dentist or dental auxiliary to practice dentistry in a negligent or incompetent manner.

(z) The failure to report to the board in writing within seven days either: (1) the death of his or her patient during the performance of any dental procedure, or (2) the discovery of the death of a patient whose death is causally related to a dental procedure performed by him or her.

(aa) Participating in or operating any group advertising and referral services that violate Section 650.2.

(bb) The failure to use a fail-safe machine with an appropriate exhaust system in the administration of nitrous oxide. The board shall, by regulation, define what constitutes a fail-safe machine.

(cc) Engaging in the practice of dentistry with an expired license.

(dd) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from dentist or dental auxiliary to patient, from patient to patient, and from patient to dentist or dental auxiliary. In administering this

subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations developed pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nurse and Psychiatric Technician Examiners, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(ee) The utilization by a licensed dentist of any person to perform the functions of a registered dental assistant, registered dental assistant in extended functions, registered dental hygienist, or registered dental hygienist in extended functions who, at the time of initial employment, does not possess a current, valid license to perform those functions.

SEC. 3. Section 2052.5 of the Business and Professions Code is amended to read:

2052.5. (a) The proposed registration program developed pursuant to subdivision (b) shall provide that, for purposes of the proposed registration program:

(1) A physician and surgeon practices medicine in this state across state lines when that person is located outside of this state but, through the use of any medium, including an electronic medium, practices or attempts to practice, or advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person in this state.

(2) A doctor of podiatric medicine practices podiatric medicine in this state across state lines when that person is located outside of this state but, through the use of any medium, including an electronic medium, practices or attempts to practice podiatric medicine, as defined in Section 2472, in this state.

(3) The proposed registration program shall not apply to any consultation described in Section 2060.

(b) The board may, at its discretion, develop a proposed registration program to permit a physician and surgeon, or a doctor

of podiatric medicine, located outside this state to register with the board to practice medicine or podiatric medicine in this state across state lines.

(1) The proposed registration program shall include proposed requirements for registration, including, but not limited to, licensure in the state or country where the physician and surgeon, or the doctor of podiatric medicine, resides, and education and training requirements.

(2) The proposed registration program may also include all of the following: (A) standards for confidentiality, format, and retention of medical records, (B) access to medical records by the board, (C) registration fees, renewal fees, delinquency fees, and replacement document fees in an amount not to exceed the actual cost of administering the registration program, and (D) provisions ensuring that enforcement and consumer education shall be integral parts of administering the registration program.

(3) The proposed registration program may also provide all of the following:

(A) All laws, rules, and regulations that govern the practice of medicine or podiatric medicine in this state, including, but not limited to, confidentiality and reporting requirements, shall apply to a physician and surgeon, or a doctor of podiatric medicine, who is registered by the board to practice medicine or podiatric medicine in this state across state lines.

(B) The board may deny an application for registration or may suspend, revoke, or otherwise discipline a registrant for any of the following: (i) on any ground prescribed by this chapter, (ii) failure to possess or to maintain a valid license in the state where the registrant resides, or (iii) if the applicant or registrant is not licensed by the state or country in which he or she resides, and that state or country prohibits the practice of medicine or podiatric medicine from that state or country into any other state or country without a valid registration or license issued by the state or country in which the applicant or registrant practices. Action to deny or discipline a registrant shall be taken in the manner provided for in this chapter.

(C) Any of the following shall be grounds for discipline of a registrant: (i) to allow any person to engage in the practice of medicine or podiatric medicine in this state across state lines under his or her registration, including, but not limited to, any nurse, physician assistant, medical assistant, or other person, (ii) to fail to include his or her registration number on any invoice or other type of billing statement submitted for care or treatment provided to a patient located in this state, (iii) to practice medicine or podiatric medicine in any other state or country without meeting the legal requirements to practice medicine or podiatric medicine in that state or country, or (iv) to fail to notify the board, in a manner prescribed

by the board, of any restrictions placed on his or her medical license, or podiatric medical license, in any state.

(D) A registration issued pursuant to the registration program shall automatically be suspended upon receipt of a copy, from the state that issued the license, of the surrender, revocation, suspension, or other similar type of action taken by another state or country against a medical license, or podiatric medical license, issued to a registrant. The board shall notify the registrant in writing of the suspension and of the registrant's right to a hearing.

(4) Section 2314 shall not apply to the registration program.

(c) This section shall not be construed to authorize the board to implement a registration program for physicians and surgeons or doctors of podiatric medicine located outside this state. This section is intended to authorize the board to develop a proposed registration program to be authorized for implementation by future legislation.

SEC. 4. Section 2365 of the Business and Professions Code is amended to read:

2365. (a) The board shall establish criteria for the acceptance, denial, or termination of participants in the diversion program. Unless ordered by the board as a condition of disciplinary probation, only those participants who have voluntarily requested diversion treatment and supervision by a committee shall participate in the diversion program.

(b) A participant who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A participant under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the participant requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licensee to enter into the diversion program, the Diversion Program Manager may require the licensee, while under current investigation for any violations of the Medical Practice Act or other violations, to execute a statement of understanding that states that the licensee understands that his or her violations of the Medical Practice Act or other statutes that would otherwise be the basis for discipline may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a participant are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 2239, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board may close the investigation without further action if the licensee is accepted into the board's diversion program and successfully

completes the requirements of the program. If the participant withdraws or is terminated from the program by a diversion evaluation committee, the investigation may be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any participant for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All participants shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licensee presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any participant terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A participant who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 5. Section 3041.1 of the Business and Professions Code is amended to read:

3041.1. (a) There shall be the Therapeutic Pharmaceutical Agent Advisory Committee within the State Board of Optometry. The committee shall consist of six members: three board-certified ophthalmologists currently licensed in good standing in California, to be appointed by the Medical Board of California; and three optometrists who have passed the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" examination or, in the event it is no longer offered, its equivalent, as determined by the State Board of Optometry, to be appointed by the State Board of Optometry.

(b) The committee shall recommend protocols that the State Board of Optometry may use in its decisionmaking process. These protocols shall include all of the following:

(1) A protocol relating to peripheral infectious corneal ulcers.
(2) A protocol for deciding issues relating to equivalency of education and training of optometrists licensed outside of California. This shall not relieve optometrists licensed outside of California from the requirement of completing a preceptorship pursuant to paragraph (2) of subdivision (b) of Section 3041.3.

(c) The committee shall provide the Medical Board of California with copies of its recommendations.

SEC. 6. Section 3041.3 of the Business and Professions Code is amended to read:

3041.3. (a) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in subdivisions (b), (d), and (e) of Section 3041, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.

(b) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry prior to January 1, 1996, is licensed as an optometrist in California, and meets all of the following requirements:

(1) Satisfactorily completes a didactic course of no less than 80 classroom hours in the diagnosis, pharmacological, and other treatment and management of ocular disease provided by either an accredited school of optometry in California or a recognized residency review committee in ophthalmology in California.

(2) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, in either an ophthalmologist's office or an optometric clinic. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular, systemic disease. The preceptor shall certify completion of the preceptorship. Authorization for the ophthalmologist to serve as a preceptor shall be provided by an accredited school of optometry in California, or by a recognized residency review committee in ophthalmology, and the preceptor shall be licensed as an ophthalmologist in California, board-certified in ophthalmology, and in good standing with the Medical Board of California. The individual serving as the preceptor shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the ophthalmologist preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.

(3) Successfully completes a minimum of 20 hours of self-directed education.

(4) Passes the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" examination or, in the event this examination is no longer offered, its equivalent, as determined by the State Board of Optometry.

(5) Passes the examination issued upon completion of the 80-hour didactic course required under paragraph (1) and provided by the

accredited school of optometry or residency program in ophthalmology.

(6) When any or all of the requirements contained in paragraph (1), (4), or (5) have been satisfied on or after July 1, 1992, and before January 1, 1996, an optometrist shall not be required to fulfill the satisfied requirements in order to obtain certification to use therapeutic pharmaceutical agents. In order for this paragraph to apply to the requirement contained in paragraph (5), the didactic examination that the applicant successfully completed shall meet equivalency standards, as determined by the board.

(7) Any optometrist who graduated from an accredited school of optometry on or after January 1, 1992, and before January 1, 1996, shall not be required to fulfill the requirements contained in paragraphs (1), (4), and (5).

(c) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry on or after January 1, 1996, who is licensed as an optometrist in California, and who meets all of the following requirements:

(1) Passes the National Board of Examiners in Optometry's national board examination, or its equivalent, as determined by the State Board of Optometry.

(2) Of the total clinical training required by a school of optometry's curriculum, successfully completed at least 65 of those hours on the diagnosis, treatment, and management of ocular, systemic disease.

(3) Is certified by an accredited school of optometry as competent in the diagnosis, treatment, and management of ocular, systemic disease to the extent authorized by this section.

(4) Is certified by an accredited school of optometry as having completed at least 10 hours of experience with a board-certified ophthalmologist.

(d) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who is an optometrist who obtained his or her license outside of California if he or she meets all of the requirements for an optometrist licensed in California to be certified to use therapeutic pharmaceutical agents.

(1) In order to obtain a certificate to use therapeutic pharmaceutical agents, any optometrist who obtained his or her license outside of California and graduated from an accredited school of optometry prior to January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (b). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received at the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry in California for persons who graduate before January 1, 1996. For those out-of-state applicants who

request that any of the requirements contained in subdivision (b) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(2) In order to obtain a certificate to use therapeutic pharmaceutical agents, any optometrist who obtained his or her license outside of California and who graduated from an accredited school of optometry on or after January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (c). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received by the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry for persons who graduate on or after January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (c) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(3) The State Board of Optometry shall decide all issues relating to the equivalency of an optometrist's education or training under this subdivision, and the committee established pursuant to Section 3041.1 shall recommend protocols for the board to use in this regard, as described in Section 3041.1.

SEC. 7. Section 7044.2 of the Business and Professions Code is amended to read:

7044.2. This chapter does not apply to an admitted surety insurer whenever that surety insurer engages a contractor to undertake the completion of a contract on which a performance or completion bond was issued by the surety insurer, provided all actual construction work is performed by duly licensed contractors.

SEC. 8. Section 9884 of the Business and Professions Code is amended to read:

9884. (a) An automotive repair dealer shall pay the fee required by this chapter for each place of business operated by the dealer in this state and shall register with the director upon forms prescribed by the director. The forms shall contain sufficient information to identify the automotive repair dealer, including name, address of each location, a statement by the dealer that each location is in an area that, pursuant to local zoning ordinances, permits the operation of a facility for the repair of motor vehicles, the dealer's retail seller's permit number, if a permit is required under the Sales and Use Tax Law (Part 1 (commencing with Section 6001), Division 2, Revenue and Taxation Code), and other identifying data that are prescribed by the director. If the business is to be carried on under a fictitious name, the fictitious name shall be stated. If the automotive repair dealer is a partnership, identifying data that are prescribed by the

director shall be stated for each partner. If the automotive repair dealer is a corporation, data shall be included for each of the officers and directors of the corporation as well as for the individual in charge of each place of the automotive repair dealer's business in this state. The forms shall include a statement signed by the dealer under penalty of perjury that the information provided is true.

(b) A state agency is not authorized or required by this section to enforce a city, county, regional, air pollution control district, or air quality management district rule or regulation regarding the site or operation of a facility that repairs motor vehicles.

SEC. 9. Section 10250.2 of the Business and Professions Code is amended to read:

10250.2. (a) The sale or lease, or the offering for sale or lease, of lots or parcels in a subdivision is governed by this article and Chapter 1 (commencing with Section 11000) of Part 2, insofar as applicable.

(b) Subject to Sections 10250.8, 11018.8, 11018.9, 11018.10, and 11018.11, the commissioner shall apply Sections 11018 and 11018.5, after taking into consideration the differences in the applicable laws of the various states with respect to subdivisions, to afford substantially the same level of public protection to purchasers of an interest in a subdivision offering governed by this article as is afforded to purchasers of subdivision interests situated entirely within this state.

The commissioner may adopt regulations as reasonably necessary to enforce this article.

SEC. 10. Section 11018.11 of the Business and Professions Code, as added by Chapter 1335 of the Statutes of 1980, is amended and renumbered to read:

11018.14. The commissioner shall not be a responsible agency for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000), Public Resources Code). Receipt by the commissioner of a copy of an environmental impact report or negative declaration prepared pursuant to the California Environmental Quality Act shall be conclusive evidence of compliance with that act for purposes of issuing a subdivision public report.

SEC. 11. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city, or city and county, having a population in excess of 750,000, with the consent of the

district attorney, by a city prosecutor in any city having a full-time city prosecutor, or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the state Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the state Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(e) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be

paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 12. Section 24071.2 of the Business and Professions Code is amended to read:

24071.2. (a) When the ownership of 50 percent or more of the membership interests in a limited liability company required to report the issuance or transfer of memberships under Section 23405.3 is acquired by or transferred to a person or persons who did not hold the ownership of 50 percent of the membership interests on the date the license was issued to the limited liability company, the license of the limited liability company shall be transferred to the limited liability company as newly constituted. The fee for the transfer shall be equal to 50 percent of the original fee for the license, except that the minimum fee shall be one hundred dollars (\$100) and the maximum fee shall be eight hundred dollars (\$800). In situations involving the multiple and simultaneous transfer of licenses under this section, the regular transfer fee shall be required for only one of the licenses being transferred and the remainder of the licenses shall be transferred for a fee of one hundred dollars (\$100) each. All of the transfer fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund, as provided in Section 25761. Before the license is transferred, the department shall conduct an investigation pursuant to Section 23958. Any person or persons who own 50 percent or more of the membership interests of the limited liability company shall have all the qualifications required of a person holding the same type of license.

(b) No retail license shall be transferred by a limited liability company under this section unless, before the filing of the transfer application with the department, the company initiating the transfer records, in the office of the county recorder of the county or counties in which the premises to which the license has been issued are situated, a notice of the intended transfer, stating all of the following:

(1) The name and address of the limited liability company;

(2) The name and address of the person or persons acquiring ownership of 50 percent or more of the membership interests of the limited liability company.

(3) The amount of the consideration paid for the membership interests.

(4) The kind of license or licenses intended to be transferred.

(5) The address or addresses of the premises to which the license or licenses have been issued.

A copy of the notice of the intended transfer, certified by the county recorder, shall be filed with the department together with the transfer application.

(c) Notwithstanding any other provision of this division to the contrary, a limited liability company as newly constituted by transfer

under this section shall not be eligible for any new credit from any person named in Section 25509 until all delinquent payments owed by the limited liability company as formerly constituted are made, nor shall any retail licensee, by transferring its license under this section, avoid the provisions of Section 25509 with regard to 42-day or 30-day periods, percentage charges for unpaid balances, or cash-on-delivery basis.

(d) Nothing in this section shall be deemed to authorize the formation of a limited liability company composed of only one member in violation of subdivision (b) of Section 17050 of the Corporations Code.

SEC. 13. Section 25662 of the Business and Professions Code is amended to read:

25662. (a) Any person under the age of 21 years who has any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public is guilty of a misdemeanor. This section does not apply to possession by a person under the age of 21 years making a delivery of an alcoholic beverage in pursuance of the order of his or her parent, responsible adult relative, or any other adult designated by the parent or legal guardian, or in pursuance of his or her employment. That person shall have a complete defense if he or she was following, in a timely manner, the reasonable instructions of his or her parent, legal guardian, responsible adult relative, or adult designee relating to disposition of the alcoholic beverage.

(b) Unless otherwise provided by law, where a peace officer has lawfully entered the premises, the peace officer may seize any alcoholic beverage in plain view that is in the possession of, or provided to, a person under the age of 21 years at social gatherings, when those gatherings are open to the public, 10 or more persons under the age of 21 years are participating, persons under the age of 21 years are consuming alcoholic beverages, and there is no supervision of the social gathering by a parent or guardian of one or more of the participants.

Where a peace officer has seized alcoholic beverages pursuant to this subdivision, the officer may destroy any alcoholic beverage contained in an opened container and in the possession of, or provided to, a person under the age of 21 years, and, with respect to alcoholic beverages in unopened containers, the officer shall impound those beverages for a period not to exceed seven working days pending a request for the release of those beverages by a person 21 years of age or older who is the lawful owner or resident of the property upon which the alcoholic beverages were seized. If no one requests release of the seized alcoholic beverages within that period, those beverages may be destroyed.

SEC. 14. Section 1365 of the Civil Code is amended to read:

1365. Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all of its members the following documents:

(a) A pro forma operating budget, which shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in bold type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) equals of the amount determined for purposes of clause (i) of subparagraph (B).

(3) A statement as to whether the board of directors of the association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

A copy of the operating budget shall be annually distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all of its members with a written notice that the pro forma operating budget is available at the business office of the association or at another

suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

(e) (1) A summary of the association's property, general liability, and earthquake and flood insurance policies, which shall be distributed within 60 days preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:

- (A) The name of the insurer.
- (B) The type of insurance.
- (C) The policy limits of the insurance.
- (D) The amount of deductibles, if any.

(2) The association shall, as soon as reasonably practicable, notify its members by first-class mail if any of the policies described in paragraph (1) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the association receives any notice of nonrenewal of a policy described in paragraph (1), the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(3) To the extent that any of the information required to be disclosed pursuant to paragraph (1) is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its members.

(4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point boldface type, the following statement: "This summary of the association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication

charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

SEC. 15. Section 1375 of the Civil Code is amended to read:

1375. (a) Before an association commences an action for damages against a builder of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of subdivisions (b) to (g), inclusive, shall be met, except as otherwise provided in this section.

(b) (1) The association shall give written notice to the builder against whom the claim is made. This notice shall include all of the following:

(A) A preliminary list of defects.

(B) A summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if this survey has been conducted or a questionnaire has been distributed.

(C) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if this testing has been conducted.

(2) The association's notice shall, upon delivery of the notice to the builder, commence a period of time not to exceed 90 days, unless the association and builder agree to a longer period, during which the association and builder shall either, in accordance with the requirements of this section, attempt to settle the dispute or attempt to agree to submit it to alternative dispute resolution.

(3) (A) Except as provided in this section and notwithstanding any other provision of law, the notice by the association shall, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be responsible for the damages claimed, whether named in the notice or not, including claims for indemnity applicable to the claim, for a period of 150 days or a longer period agreed to in writing by the association and the builder.

(B) At any time, the builder may give written notice to cancel the tolling of the statute of limitations provided in this section. Upon delivery of this written cancellation notice, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision and subdivisions (c) to (e), inclusive. The tolling of all

applicable statutes of limitations shall cease 60 days after the written notice of cancellation by the builder is delivered to the association.

(c) (1) Within 25 days of the date the association delivers the notice required by subdivision (b), the builder may request in writing to meet and confer with the board of directors of the association, and to inspect the project and conduct testing, including testing that may cause physical damage to any property in the development, in order to evaluate the claim. If the builder does not make a timely request to meet and confer with the board of directors of the association, or to conduct inspection and testing, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision and subdivisions (d) and (e). Unless the builder and association otherwise agree, the meeting shall take place no later than 10 days from the date of the builder's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (g) of Section 1363. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and builder consent to their admission. The meeting shall be for the purpose of discussing all of the following:

(A) The nature and extent of the claimed defects.

(B) Proposed methods of repair, to the extent there is sufficient information.

(C) Proposals for submitting the dispute to alternative dispute resolution.

(D) Requests from the builder to inspect the project and conduct testing.

(2) If the builder requests in writing to meet and confer with the board of directors of the association pursuant to paragraph (1) of this subdivision, the builder shall deliver the notice provided by the association to the builder pursuant to subdivision (b) to any insurer that has issued a policy to the builder that imposes upon the insurer a duty to defend the insured or indemnify the insured for losses resulting from the defects identified in the notice required by subdivision (b). The notice by the builder shall, upon receipt, impose upon that insurer any obligation that would be imposed under the terms of the policy if the insured had been served with a summons and complaint for damages. The builder shall inform the association when the builder delivers the notice to each insurer pursuant to this paragraph.

(d) (1) If the association conducted inspection and testing prior to the date it sent the written notice pursuant to subdivision (b), the association shall, at the earliest practicable date after the meeting held pursuant to subdivision (c), make available for inspection and testing at least those areas inspected or tested by the association. The inspection and testing shall be completed within 15 days from the date the association makes these areas available for inspection and

testing, unless the association and builder agree to a longer period. If the builder does not timely complete the inspection and testing, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision and subdivision (e). The manner in which the inspection and testing shall be conducted, and the extent of any inspection and testing to be conducted beyond that which was conducted by the association prior to sending the notice, shall be set by agreement of the association and builder.

(2) The builder shall pay all costs of inspection and testing that is requested by the builder, shall restore the property to the condition that existed immediately prior to the testing, and shall indemnify the association and owner of the separate interest for any damages resulting from the testing.

(3) Interior inspections of occupied separate interests and destructive testing of any interior of a separate interest shall be conducted in accordance with the governing documents of the association, unless otherwise agreed to by the owner of the separate interest. If the governing documents of the association do not provide for inspection or testing of separate interests, this inspection or testing shall be conducted in a manner and at a time agreed to by the owner of the separate interest.

(4) The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this section.

(e) (1) Within 30 days of the completion of inspection and testing or within 30 days of a meeting held pursuant to subdivision (c) if no inspection and testing is conducted pursuant to subdivision (d), the builder shall submit to the association all of the following:

(A) A request to meet with the board to discuss a written settlement offer.

(B) A written settlement offer, and a concise explanation of the specific reasons for the terms of the offer. This offer may include an offer to submit the dispute to alternative dispute resolution.

(C) A statement that the builder has access to sufficient funds to satisfy the conditions of the settlement offer.

(D) A summary of the results of testing conducted for the purpose of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the builder with actual test results pursuant to subdivision (b), in which case the builder shall provide the association with actual test results.

(2) If the builder does not timely submit the items required by this subdivision, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision only.

(3) No less than 10 days after the builder submits the items required by this paragraph, the builder and the board of directors of the association shall meet and confer about the builder's settlement

offer, including any offer to submit the dispute to alternative dispute resolution.

(D) (1) At any time after the notice required by subdivision (b) is delivered to the builder, the association and builder may agree in writing to modify or excuse any of the time periods or other obligations imposed by this section.

(2) Except for the notice required pursuant to subdivision (g), all notices, requests, statements, or other communications required pursuant to this section shall be delivered by one of the following:

(A) By first-class registered or certified mail, return receipt requested.

(B) In any manner in which it is permissible to serve a summons pursuant to Section 415.10 or 415.20 of the Code of Civil Procedure.

(g) If the board of directors of the association rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall comply with the requirements of paragraph (1) of this subdivision. If the association is relieved of its obligations to satisfy the requirements of subdivisions (a) to (e), inclusive, before all those requirements are satisfied, the association shall comply with the requirements of paragraph (2) of this subdivision. Under no circumstances may the association be required to comply with both paragraph (1) and paragraph (2) of this subdivision.

(1) (A) If the association's board of directors rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall hold a meeting open to each member of the association. The meeting shall be held no less than 15 days before the association commences an action for damages against the builder.

(B) No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:

(i) That a meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of this meeting.

(ii) The options that are available to address the problems, including the filing of a civil action.

(iii) The complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer submitted to the board pursuant to paragraph (1) of subdivision (e), received from the builder and of any offer by the builder to submit the dispute to alternative dispute resolution.

(iv) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b) and a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents.

(C) The builder shall pay all expenses attributable to sending the settlement offer and any offer for alternative dispute resolution to all

members of the association. The builder shall also pay the expense of holding the meeting, not to exceed three dollars (\$3) per association member.

(D) The discussions at the meeting, and the contents of the notice and the items required to be specified in the notice pursuant to subparagraph (B), are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.

(E) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(2) If the association is relieved of its obligations to satisfy the requirements of subdivisions (a) to (e), inclusive, before all of those requirements have been satisfied, the association may commence an action for damages against the builder 30 days after sending a written notice to each member specifying all of the following:

(A) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b), a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents.

(B) The options, including civil actions, that are available to address the problems.

(C) A statement that if 5 percent of the members of the association request a special meeting of the members to discuss the matter within 15 days of the date the notice is mailed or delivered to the members of the association, a meeting of the members shall be held, unless governing documents of the association provide for a different procedure for calling a special meeting of the members, in which case the statement shall inform the members of that procedure.

(D) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(h) (1) The only method of seeking judicial relief for the failure of the association to comply with this section shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the association against the builder after that action has been filed. A verified application asserting that procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist.

(2) Upon the verified application of the association or the builder alleging substantial noncompliance with this section, the court shall schedule a hearing within 21 days of the application to determine whether the association or builder has substantially complied with this section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(3) (A) If the court finds that the association did not substantially comply with this section, the court shall stay the action for up to 90

days to allow the association to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial compliance by the association. At any time, the court may, for good cause shown, extend the period of the stay upon application of the association.

(B) If, within the time set by the court pursuant to this section, the association has not established that it has substantially complied with this section, the court shall determine if, in the interest of justice, the action should be dismissed without prejudice, or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the association's failure to substantially comply with this section. In determining the appropriate remedy, the court shall consider the extent to which the builder has complied with this section.

(C) If the alleged noncompliance of either the builder or the association resulted from the unreasonable withholding of consent for inspection or testing by an owner of a separate interest, it shall not be considered substantial noncompliance, provided that the party alleged to be out of compliance did not encourage the withholding of consent.

(4) If the court finds that the builder did not pay all of the costs of inspection and testing pursuant to paragraph (3) of subdivision (a), or that the builder did not pay its required share of the costs of holding the meeting and of all expenses attributable to sending the settlement offer pursuant to subparagraph (C) of paragraph (1) of subdivision (g) of this section, the court shall order the builder to pay any deficiencies within 30 days, with interest, and any additional remedy which the court determines, in the interest of justice, should be fashioned.

(i) As used in this section:

(1) "Association" shall have the same meaning as in subdivision (a) of Section 1351.

(2) "Builder" means the declarant, as defined in subdivision (g) of Section 1351.

(3) "Common interest development" shall have the same meaning as in subdivision (c) of Section 1351, except that it shall not include developments or projects with less than 20 units.

SEC. 16. Section 1861.607 of the Civil Code is amended and renumbered to read:

1812.607. Every auction company and auctioneer shall do all of the following:

(a) Disclose his or her name, trade or business name, telephone number, and bond number in all advertising of auctions. A first violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50); a second violation is subject to a fine of seventy-five dollars (\$75); and a third or subsequent violation is subject to a fine of one hundred dollars (\$100). This section shall not apply to business

cards, business stationery, or to any advertisement that does not specify an auction date.

(b) Post a sign, the dimensions of which shall be at least 18 inches by 24 inches, at the main entrance to each auction, stating that the auction is being conducted in compliance with Section 2328. of the Commercial Code, Section 535 of the Penal Code, and the provisions of the California Civil Code. A first violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50); a second violation is subject to a fine of seventy-five dollars (\$75); and a third or subsequent violation is subject to a fine of one hundred dollars (\$100).

(c) Post or distribute to the audience the terms, conditions, restrictions, and procedures whereby goods will be sold at the auction, and announce any changes to those terms, conditions, restrictions, and procedures prior to the beginning of the auction sale. A first violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50); a second violation is subject to a fine of one hundred dollars (\$100); and a third or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(d) Notify the Secretary of State of any change in address of record within 30 days of the change. A violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50).

(e) Notify the Secretary of State of any change in the officers of a corporate license within 30 days of the change. A violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50).

(f) Notify the Secretary of State of any change in the business or trade name of the auctioneer or auction company within 30 days of the change. A violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50).

(g) Keep and maintain, at the auctioneer's or auction company's address of record, complete and correct records and accounts pertaining to the auctioneer's or auction company's activity for a period of not less than two years. The records shall include the name and address of the owner or consignor and of any buyer of goods at any auction sale engaged in or conducted by the auctioneer or auction company, a description of the goods, the terms and conditions of the acceptance and sale of the goods, all written contracts with owners and consignors, and accounts of all moneys received and paid out, whether on the auctioneer's or auction company's own behalf or as agent, as a result of those activities. A first violation of this subdivision is a misdemeanor subject to a fine of five hundred dollars (\$500); and a second or subsequent violation is subject to a fine of one thousand dollars (\$1,000).

(h) Within 30 working days after the sale transaction, provide, or cause to be provided, an account to the owner or consignor of all goods that are the subject of an auction engaged in or conducted by the auctioneer or auction company. A first violation of this subdivision is a misdemeanor subject to a fine of five hundred dollars

(\$500); and a second or subsequent violation is subject to a fine of one thousand dollars (\$1,000).

(i) Within 30 working days after a sale transaction of goods, pay or cause to be paid all moneys and proceeds due to the owner or the consignor of all goods that were the subject of an auction engaged in or conducted by the auctioneer or auction company, unless delay is compelled by legal proceedings or the inability of the auctioneer or auction company, through no fault of his or her own, to transfer title to the goods or to comply with any provision of this chapter, the Commercial Code, or the Code of Civil Procedure, or with any other applicable provision of law. A first violation of this subdivision is a misdemeanor subject to a fine of one thousand dollars (\$1,000); a second violation is subject to a fine of one thousand five hundred dollars (\$1,500); and a third or subsequent violation is subject to a fine of two thousand dollars (\$2,000).

(j) Maintain the funds of all owners, consignors, buyers, and other clients and customers separate from his or her personal funds and accounts. A violation of this subdivision is an infraction subject to a fine of two hundred fifty dollars (\$250).

(k) Immediately prior to offering any item for sale, disclose to the audience the existence and amount of any liens or other encumbrances on the item, unless the item is sold as free and clear. For the purposes of this subdivision, an item is "free and clear" if all liens and encumbrances on the item are to be paid prior to the transfer of title. A violation of this subdivision is an infraction subject to a fine of two hundred fifty dollars (\$250) in addition to the requirement that the buyer be refunded, upon demand, the amount paid for any item that is the subject of the violation.

(l) Within two working days after an auction sale, return the blank check or deposit of each buyer who purchased no goods at the sale. A first violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100); and a second or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(m) Within 30 working days of any auction sale, refund that portion of the deposit of each buyer that exceeds the cost of the goods purchased, unless delay is compelled by legal proceedings or the inability of the auctioneer or auction company, through no fault of his or her own, to transfer title to the goods or to comply with any provision of this chapter, the Commercial Code, or the Code of Civil Procedure, or with other applicable provisions of law, or unless the buyer violated the terms of a written agreement that he or she take possession of purchased goods within a specified period of time. A first violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100); and a second or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

SEC. 17. Section 1861.608 of the Civil Code is amended and renumbered to read:

1812.608. In addition to other requirements and prohibitions of this title, it is a violation of this title for any person to do any of the following:

(a) Fail to comply with any provision of this code, or with any provision of the Vehicle Code, the Commercial Code, any regulation of the Secretary of State, the Code of Civil Procedure, the Penal Code, or any law administered by the State Board of Equalization, relating to the auctioneering business, including, but not limited to, sales and the transfer of title of goods.

(b) Aid or abet the activity of any other person that violates any provision of this title. A violation of this subdivision is a misdemeanor subject to a fine of one thousand dollars (\$1,000).

(c) Place or use any misleading or untruthful advertising or statements or make any substantial misrepresentation in conducting auctioneering business. A first violation of this subdivision is a misdemeanor subject to a fine of five hundred dollars (\$500); and a second or subsequent violation is subject to a fine of one thousand dollars (\$1,000).

(d) Sell goods at auction before the auctioneer or auction company involved has first entered into a written contract with the owner or consignor of the goods, which contract sets forth the terms and conditions upon which the auctioneer or auction company accepts the goods for sale. The written contract shall include all of the following:

(1) The auctioneer's or auction company's name, trade or business name, business address, and business telephone number.

(2) An inventory of the item or items to be sold at auction.

(3) A description of the services to be provided and the agreed consideration for the services, which description shall explicitly state which party shall be responsible for advertising and other expenses.

(4) The approximate date or dates when the item or items will be sold at auction.

(5) A statement as to which party shall be responsible for insuring the item or items against loss by theft, fire, or other means.

(6) A disclosure that the auctioneer or auction company has a bond on file with the Secretary of State. A first violation of this subdivision is an infraction subject to a fine of two hundred fifty dollars (\$250); a second violation is subject to a fine of five hundred dollars (\$500); and a third or subsequent violation is subject to a fine of one thousand dollars (\$1,000).

(e) Sell goods at auction before the auctioneer or auction company involved has first entered into a written contract with the auctioneer who is to conduct the auction. A first violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100); and a second or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(f) Fail to reduce to writing all amendments or addenda to any written contract with an owner or consignor or an auctioneer. A first violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100); and a second or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(g) Fail to abide by the terms of any written contract required by this section. A first violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100); and a second or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(h) Cause or allow any person to bid at a sale for the sole purpose of increasing the bid on any item or items being sold by the auctioneer, except as authorized by Section 2328 of the Commercial Code or by this title. A violation of this subdivision includes, but is not limited to, either of the following:

(1) Stating any increased bid greater than that offered by the last highest bidder when, in fact, no person has made such a bid.

(2) Allowing the owner, consignor, or agent thereof, of any item or items to bid on the item or items, without disclosing to the audience that the owner, consignor, or agent thereof has reserved the right to so bid.

A violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100).

(i) Knowingly misrepresent the nature of any item or items to be sold at auction, including, but not limited to, age, authenticity, value, condition, or origin. A violation of this subdivision is an infraction subject to a fine of two hundred fifty dollars (\$250). In addition, it shall be required that the buyer of the misrepresented item be refunded the purchase price of the item or items within 24 hours of return to the auctioneer or auction company of the item by the buyer, provided that the item is returned within five days after the date of the auction sale.

(j) Misrepresent the terms, conditions, restrictions, or procedures under which goods will be sold at auction. A violation of this subdivision is an infraction subject to a fine of seventy-five dollars (\$75).

(k) Sell any item subject to sales tax without possessing a valid and unrevoked seller's permit from the State Board of Equalization. A violation of this subdivision is an infraction subject to a fine of five hundred dollars (\$500).

SEC. 18. Section 1201 of the Commercial Code is amended to read:

1201. The following definitions apply for purposes of this code, subject to additional definitions contained in the subsequent divisions of this code that apply to specific divisions or chapters thereof, and unless the context otherwise requires:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing, usage of trade, and course of performance as provided in this code (Sections 1205, 2208, and 10207). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable, and otherwise by the law of contracts (Section 1103). (Compare "contract.")

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and that, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold, and dispose of the document and the goods it covers. Designation of a document by the issuer as a "bill of lading" is conclusive evidence of that intention. "Bill of lading" includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or mineralhead are deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash, or by exchange of other property or on secured or unsecured credit, and includes receiving goods or documents of title under a preexisting contract for sale, but does not include a transfer in bulk or as security for, or in total or partial satisfaction of, a money debt.

(10) "Conspicuous." A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE

BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color, except that in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation that results from the parties' agreement as affected by this code and any other applicable rules of law. (Compare "agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery," with respect to instruments, documents of title, chattel paper, or certificated securities, means the voluntary transfer of possession.

(15) "Document of title" includes a bill of lading, dock warrant, dock receipt, warehouse receipt, gin ticket, or compress receipt, and any other document that, in the regular course of business or financing, is treated as adequately evidencing that the person entitled under the document (Section 7403(4)) has the right to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document shall purport to be issued by a bailee and purport to cover goods in the bailee's possession that either are identified as or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission, or breach.

(17) "Fungible," with respect to goods or securities, means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods that are not fungible shall be deemed fungible for the purposes of this code to the extent that, under a particular agreement or document, unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder," with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder," with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay or, where a credit so engages, to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business, cannot pay his or her debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when any of the following occurs:

(a) He or she has actual knowledge of it.

(b) He or she has received a notice or notification of it.

(c) From all the facts and circumstances known to him or her at the time in question, he or she has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn," or a word or phrase of similar import, refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking those steps that may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when any of the following occurs:

(a) It comes to his or her attention.

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of these communications.

(27) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of his or her regular duties, or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust,

partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this division.

(30) "Person" includes an individual or an organization. (See Section 1102.)

(31) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(32) "Purchaser" means a person who takes by purchase.

(33) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(34) "Representative" includes an agent, an officer of a corporation or association, a trustee, executor, or administrator of an estate, or any other person empowered to act for another.

(35) "Rights" includes remedies.

(36) (a) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2401) is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper that is subject to Division 9 (commencing with Section 9101). The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with Division 9 (commencing with Section 9101). Unless a consignment is intended as security, reservation of title thereunder is not a "security interest," but a consignment in any event is subject to the provisions on consignment sales (Section 2326).

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and any of the following conditions applies:

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods.

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods.

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(c) A transaction does not create a security interest merely because it provides one or more of the following:

(i) That the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or greater than the fair market value of the goods at the time the lease is entered into.

(ii) That the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods.

(iii) That the lessee has an option to renew the lease or to become the owner of the goods.

(iv) That the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed.

(v) That the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(vi) In the case of a motor vehicle, as defined in Section 415 of the Vehicle Code, or a trailer, as defined in Section 630 of that code, that is not to be used primarily for personal, family, or household purposes, that the amount of rental payments may be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the vehicle or trailer. Nothing in this subparagraph affects the application or administration of the Sales and Use Tax Law (Part 1 (commencing with Section 6001), Division 2, Revenue and Taxation Code).

(d) For purposes of this subdivision (36), all of the following apply:

(i) Additional consideration is not nominal if (A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(ii) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(iii) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the

parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(37) "Send," in connection with any writing or notice, means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed or, if there be none, to any address reasonable under the circumstances. The receipt of any writing or notice within the time in which it would have arrived if properly sent has the effect of a proper sending. When a writing or notice is required to be sent by registered or certified mail, proof of mailing is sufficient, and proof of receipt by the addressee is not required unless the words "with return receipt requested" are also used.

(38) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(39) "Surety" includes guarantor.

(40) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(41) "Term" means that portion of an agreement that relates to a particular matter.

(42) "Unauthorized" signature means one made without actual, implied, or apparent authority, and includes a forgery.

(43) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3303, 4210, and 4211), a person gives "value" for rights if he or she acquires them in any of the following ways:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection.

(b) As security for, or in total or partial satisfaction of, a preexisting claim.

(c) By accepting delivery pursuant to a preexisting contract for purchase.

(d) Generally, in return for any consideration sufficient to support a simple contract.

(44) "Warehouse receipt" means a document evidencing the receipt of goods for storage issued by a warehouseman (Section 7102), and that, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold, and dispose of the document and the goods it covers. Designation of a document by the issuer as a "warehouse receipt" is conclusive evidence of that intention.

(45) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

SEC. 19. Section 8450 of the Education Code is amended to read:

8450. (a) All child development contractors are encouraged to develop and maintain a reserve within the child development fund, derived from earned but unexpended funds. Child development contractors may retain all earned funds. For the purpose of this section, "earned funds" are those for which the required number of eligible service units have been provided.

(b) Earned funds may not be expended for any activities proscribed by Section 8406.7. Earned but unexpended funds shall remain in the contractor's reserve account within the child development fund and shall be expended only by direct service child development programs that are funded under contract with the State Department of Education.

(c) Notwithstanding subdivisions (a) and (b), a contractor may retain a reserve fund balance for a resource and referral program, separate from the balance retained pursuant to subdivision (b), not to exceed 3 percent of the contract amount. Funds from this reserve account may be expended only by resource and referral programs that are funded under contract with the State Department of Education.

(d) Notwithstanding subdivisions (a) and (b), a contractor may retain a reserve fund for alternative payment model and certificate child care contracts, separate from the reserve fund retained pursuant to subdivisions (b) and (c). Funds from this reserve account may be expended only by alternative payment model and certificate child care programs that are funded under contract with the State Department of Education. The reserve amount allowed by this section may not exceed either of the following, whichever is greater:

(1) Two percent of the sum of the parts of each contract to which that contractor is a party that is allowed for administration pursuant to Section 8276.7 and that is allowed for supportive services pursuant to the provisions of the contract.

(2) One thousand dollars (\$1,000).

(e) Each contractor's audit shall identify any funds earned by the contractor for each contract through the provision of contracted services in excess of funds expended.

(f) Any interest earned on reserve funds shall be included in the fund balance of the reserve. This reserve fund shall be maintained in an interest-bearing account.

(g) Moneys in a contractor's reserve fund may be used only for expenses that are reasonable and necessary costs as defined in subdivision (o) of Section 8208.

(h) Any reserve fund balance in excess of the amount authorized pursuant to subdivisions (c) and (d) shall be returned to the State Department of Education pursuant to procedures established by the

department and reappropriated as second-year funds consistent with Section 8278.

(i) Upon termination of all child development contracts between a contractor and the State Department of Education, all moneys in a contractor's reserve fund shall be returned to the department pursuant to procedures established by the department, and reappropriated as second-year funds consistent with Section 8278.

(j) Expenditures from, additions to, and balances in, the reserve fund shall be included in the agency's annual financial statements and audit.

SEC. 20. Section 15301 of the Education Code is amended to read:

15301. (a) Any school district or community college district that has a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, that has as one of its purposes the construction of school facilities within a portion of the territory of the school district or community college district, may proceed under this chapter.

(b) The boundaries of any school facilities improvement district formed pursuant to this chapter shall include all of the portion of the territory within the boundaries of the school district or community college district that is not located within the boundaries of the community facilities district as described in subdivision (a).

(c) A school district or community college district may proceed under this chapter without meeting the requirements of subdivisions (a) and (b) if the governing board of the school district or community college district determines that it is necessary and in the best interest of the school district or community college district, respectively, to form a school facilities improvement district pursuant to this chapter to finance any or all of the improvements described in Section 15302. As a part of that determination, the governing board of the school district or community college district shall make a finding that the overall cost of financing the bonds issued pursuant to this chapter would be less than the overall cost of other school facilities financing options available to the school district or community college district, including, but not limited to, issuing bonds pursuant to the Mello-Roos Community Facilities Act of 1982. The governing board of the school district or community college district proceeding under this subdivision shall define the boundaries of the school facilities improvement district to include any portion of territory within the jurisdiction of the school district or community college district, except that the boundaries may not include all or a portion of the territory of the community facilities district described in subdivision (a).

SEC. 21. Section 15320 of the Education Code is amended to read:

15320. Whenever the governing board of a school district or community college district meeting the requirements set forth in Section 15301 determines that a school facilities improvement district is necessary, the governing board shall adopt a resolution of intention that states all of the following:

(a) The intention of the governing board to form the proposed school facilities improvement district.

(b) The purpose for which the proposed school facilities improvement district is to be formed, consistent with the requirements set forth in Section 15302.

(c) The estimated cost of the school facilities improvement project.

(d) That any taxes levied for the purpose of financing the general obligation bonds issued to finance the project shall be levied exclusively upon the lands in the proposed school facilities improvement district.

(e) That a map showing the exterior boundaries of the proposed school facilities improvement district is on file with the governing board of the school district or community college district and is available for inspection by the public. The boundaries of the school facilities improvement district shall meet the requirements set forth in subdivision (b) of Section 15301.

(f) The time and place for a hearing by the governing board on the formation of the proposed school facilities improvement district.

(g) That any interested persons, including all persons owning lands in the school district or community college district, or in the proposed school facilities improvement district, may appear and be heard.

SEC. 22. Section 15327 of the Education Code is amended to read:

15327. The governing board of the school district or community college district in which a school facilities improvement district has been formed shall have the same rights, powers, duties, and responsibilities with respect to the formation and government of the school facilities improvement district as the governing board has with respect to the school district or community college district.

SEC. 23. Section 15356 of the Education Code is amended to read:

15356. (a) (1) The board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located shall prescribe the form of the bonds by an order entered upon its minutes.

(2) The bonds shall be signed by the chairperson of the board of supervisors, or by any other member thereof as the board of supervisors shall, by resolution adopted by a four-fifths vote of all its members, authorize and designate for that purpose, and also signed by the treasurer of the county, and shall be countersigned by the clerk of the board of supervisors or by a deputy of either of the

officers. Unless the board of supervisors otherwise provides, all the signatures and countersignatures may be printed, lithographed, engraved, or otherwise mechanically reproduced except that one of the signatures or countersignatures to the bonds shall be manually affixed. Any signature may be affixed in accordance with the provisions of the Uniform Facsimile Signatures of Public Officials Act (Chapter 6 (commencing with Section 5500) of Title 1 of the Government Code).

(3) All expenses incurred for the preparation, sale, and delivery of the school facilities improvement bonds including, but not limited to, fees of an independent financial consultant, the publication of the official notice of sale of the bonds, the preparation, printing, and distribution of the official statement, the obtaining of a rating, the purchase of insurance insuring the prompt payment of interest and principal, the preparation of the certified copy of the transcript for the successful bidder, the printing of the bonds, and legal fees of independent bond counsel retained by the school facilities improvement district issuing the bonds are legal charges against the funds of the school facilities improvement district issuing the bonds and may be paid from the proceeds of sale of the bonds.

(b) Notwithstanding subdivision (a), the board of supervisors may, in its discretion, determine that all of the required signatures and countersignatures shall be by facsimiles, provided, however, that the bonds shall not be valid or become obligatory for any purpose until manually signed by an authenticating agent duly appointed by the board or its authorized designee.

SEC. 24. Section 15357 of the Education Code is amended to read:

15357. The board of supervisors shall establish within the county treasury a school facilities improvement fund for each school facilities improvement district for the purpose of depositing the proceeds of the bonds issued pursuant to this chapter. The board of supervisors shall also establish within the county treasury a school facilities improvement bond interest and sinking fund for each school facilities improvement district.

SEC. 25. Section 15359 of the Education Code is amended to read:

15359. Before selling the bonds, or any part of them, the board of supervisors, as appropriate, shall advertise for bids at least two weeks in a daily or weekly newspaper of general circulation published in the county whose county superintendent of schools has jurisdiction over the governing board of the school district or community college district in which the school facilities improvement district is located or, if there is no newspaper published in the county, in a newspaper published in another county in the state having a general circulation in the county.

SEC. 26. Section 15359.2 of the Education Code is amended to read:

15359.2. (a) The issuing school facilities improvement district, by action of the governing board of the school district or community college district in which the school facilities improvement district is located, may prepare, or have prepared, bond brochures to serve as a prospectus for bond buyers to assist in the satisfactory sale of the bonds. The expense of the brochures shall be payable out of the funds of the district. The brochures may be prepared only after the issuance of the bonds to be sold has been approved by the electors of the school facilities improvement district pursuant to Article 4 (commencing with Section 15340).

(b) The issuing school facilities improvement district, by action of the governing board in which the school facilities improvement district is located, may expend funds of the school facilities improvement district for the purposes of advertising the availability of the bonds for purchase in any publication or newspaper that, in the opinion of that governing board, will give notice to prospective bond buyers that the bonds are available for purchase by bond buyers.

SEC. 27. Section 42238.145 of the Education Code is amended to read:

42238.145. For the purposes of this article, the revenue limit for each school district shall be reduced by a deficit factor, as follows:

(a) (1) For the 1994-95 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by an 11.01-percent deficit factor.

(2) For the 1995-96 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 10.12-percent deficit factor.

(3) For the 1996-97 and 1997-98 fiscal years, the revenue limit for each school district determined pursuant to this article shall be reduced by a 9.967-percent deficit factor, as adjusted pursuant to Section 42238.41.

(b) (1) The revenue limit for the 1994-95 fiscal year for each school district shall be determined as if the revenue limit for each school district had been determined for the 1993-94 fiscal year without being reduced by the deficit factor required pursuant to Section 42238.14.

(2) When computing the revenue limit for each school district for the 1995-96 or any subsequent fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the previous fiscal year without being reduced by the deficit factor specified in this section.

SEC. 28. Section 44254 of the Education Code is amended to read:

44254. (a) The commission shall establish standards for a restricted reading certificate to enable holders of a teaching credential to provide the early and continuing development of reading and language arts skills and the earliest possible correction of a pupil's reading difficulties.

(b) The standards and qualifications for the restricted reading certificate shall include, but not be limited to, demonstrated knowledge of the following:

(1) Current and confirmed research in the teaching of basic reading skills, including research in ongoing, diagnostic techniques that inform teaching and assessment.

(2) Techniques for teaching basic reading skills that include direct instruction in phonemic awareness, direct systematic, explicit phonics, and comprehension skills.

(3) Early intervention techniques.

(c) A candidate for a restricted reading certificate shall receive, within a clinical setting, guided practice in all of the skills described in subdivision (b).

(d) The commission may issue a restricted reading certificate to a holder of a teaching credential who meets the commission's standards.

(e) For purposes of this section, "direct systematic, explicit phonics" means spelling patterns, the direct instruction of sound and symbol relationships, and practice in reading connected, decodable text.

SEC. 29. Section 52335.9 of the Education Code is amended to read:

52335.9. For the 1996-97 fiscal year only, the Superintendent of Public Instruction shall recalculate the base revenue limit for each ROC/P for the purposes of subdivision (a) of Section 52335.2 to reflect the actual amount received by each ROC/P in the 1995-96 fiscal year, including funding received pursuant to the Budget Act of 1996 (Ch. 162, Stats. 1996) for the cost-of-living adjustment for the 1996-97 fiscal year and for growth in average daily attendance, but excluding the following:

(a) Any state funds made available as a result of local property tax revenues deducted pursuant to Section 52335.3.

(b) Funding allocated pursuant to Provision 7 of Item 6110-105-0001 of Section 2.00 of the Budget Act of 1996 (Ch. 162, Stats. 1996).

SEC. 30. Section 52487 of the Education Code is amended to read:

52487. (a) There is hereby created within the State Department of Education the Home Economics Careers and Technology Vocational Education Unit, to be staffed by qualified home economics education-trained personnel, to assist school districts in the establishment and maintenance of the educational programs provided for by this article.

(b) The staffing of the unit shall be at least 3.3 personnel-years.

(c) The State Supervisor of the Home Economics Careers and Technology Vocational Education Unit, under the direction of the Superintendent of Public Instruction, shall have responsibility for the administration of the program set forth in this article, as well as for

the articulation of the program to the requirements and mandates of federally assisted vocational education.

(d) An appropriate number of employees shall serve as program consultants in the Home Economics Careers and Technology Vocational Education Unit, and shall be available to provide assistance to school districts. To the extent possible, the program consultants shall be geographically located in areas that are most readily accessible to the school districts they assist. At least one consultant shall be responsible for the coordination of the leadership development activities of pupil home economics careers and technology organizations and associations.

(e) The State Department of Education shall accomplish the staffing of the Home Economics Careers and Technology Vocational Education Unit in compliance with this article by reassigning priorities in staff assignments within the department so that the staffing results in no new costs to the state.

SEC. 31. The heading of Article 6 (commencing with Section 60350) of Chapter 2 of Part 33 of the Education Code is amended and renumbered to read:

Article 7. Core Reading Program Instructional Materials

SEC. 32. Section 76002 of the Education Code is amended to read:

76002. For the purposes of receiving state apportionments, a community college district may include high school pupils who attend a community college within the district pursuant to Sections 48800 and 76001 in the district's report of full-time equivalent students (FTES) only if those pupils are enrolled in community college classes that are open to the general public.

SEC. 33. Section 87869 of the Education Code, as added by Section 2 of Chapter 943 of the Statutes of 1996, is repealed.

SEC. 34. The heading of Division 0.5 of the Elections Code, as added by Chapter 91 of the Statutes of 1995, is repealed.

SEC. 35. Section 2157 of the Elections Code is amended to read:

2157. Subject to this chapter, the affidavit of registration shall be in a form prescribed by regulations adopted by the Secretary of State. The affidavit shall:

(a) Contain the information prescribed in Section 2150.

(b) Be sufficiently uniform among the separate counties to allow for the processing and use by one county of an affidavit completed in another county.

(c) Allow for the inclusion of informational language to meet the specific needs of that county, including but not limited to, the return address of the elections official in that county, and a phone number at which a voter can obtain elections information in that county.

(d) Be included on one portion of a multipart card, to be known as a voter registration card, the other portions of which shall include

information sufficient to facilitate completion and mailing of the affidavit. The affidavit portion of the multipart card shall be numbered according to regulations adopted by the Secretary of State. For purposes of facilitating the distribution of voter registration cards as provided in Section 2158, there shall be attached to the affidavit portion a receipt. The receipt shall be separated from the body of the affidavit by a perforated line.

(e) Be returnable to the county elections official as a self-enclosed mailer with postage prepaid by the Secretary of State.

Nothing contained in this division shall prevent the use of voter registration cards and affidavits of registration in existence on the effective date of this section and produced pursuant to regulations of the Secretary of State, and all references to voter registration cards and affidavits in this division shall be applied to the existing voter registration cards and affidavits of registration.

SEC. 36. Section 12106 of the Elections Code is amended to read:

12106. (a) In each jurisdiction where the elections official determines that the public interest, convenience, and necessity require the local publication of the list of the names of precinct board members appointed and polling places designated for each election precinct in order to afford adequate notice of this subject to the electorate, publication of this list shall be made as provided in this section and Section 12105.

(b) After making a determination pursuant to subdivision (a), the elections official shall divide and distribute the list of precinct board members and polling places and cause the same to be published at least one week before the election in newspapers of general circulation published in different places in the jurisdiction. The list of precinct board members appointed need not be in precinct order for purposes of publication, at the discretion of the elections official.

(c) Divisions of the list of names of the precinct board members and polling places may be published in that daily newspaper of general circulation published or circulated in one or more cities in the county, with the exception of the county seat, that is determined will give to the electorate in each city adequate notice of the election. If there is no daily newspaper, publication may be made in a semiweekly newspaper, a biweekly newspaper, or a weekly newspaper of general circulation that is determined will give the electorate in the city adequate notice of the election.

(d) The list of names of the precinct board members appointed and polling places designated for various portions of the unincorporated area of the county and of the county seat may be published in those daily, semiweekly, biweekly, or weekly newspapers of general circulation published or circulated within the various portions of the unincorporated area and the county seat, deemed by the county elections official to be those newspapers that

will give adequate notice of the election to the voters of the respective portions of the unincorporated area and the county seat.

SEC. 37. The heading of Division 14 (commencing with Section 10100) of the Family Code is amended and renumbered to read:

DIVISION 15. FRIEND OF THE COURT ACT

SEC. 38. Section 17207 of the Financial Code is amended to read:

17207. The commissioner shall charge and collect the following fees and assessments:

(a) For filing an application for an escrow agent's license, six hundred twenty-five dollars (\$625) for the first office or location and four hundred twenty-five dollars (\$425) for each additional office or location.

(b) For filing an application for a duplicate of an escrow agent's license lost, stolen, or destroyed, or for replacement, upon a satisfactory showing of such loss, theft, destruction, or surrender of certificate for replacement, two dollars (\$2).

(c) For investigation services in connection with each application, one hundred dollars (\$100), and for investigation services in connection with each additional office application, one hundred dollars (\$100).

(d) For holding a hearing in connection with the application, as set forth under Section 17209.2, the actual costs experienced in each particular instance.

(e) (1) Each escrow agent shall pay to the commissioner for the support of this division for the ensuing year an annual license fee of two thousand dollars (\$2,000) for each office or location.

(2) On or before May 30 in each year, the commissioner shall notify each escrow agent by mail of the amount of the annual license fee levied against it, and that the payment of the invoice is payable by the escrow agent within 30 days after receipt of notification by the commissioner.

(3) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the annual license fee, of 10 percent of the fee for each month or part of a month that the payment is delayed or withheld.

(4) If an escrow agent fails to pay the amount due on or before the June 30 following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(5) If, after an order is made pursuant to paragraph (4), a request for a hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a company shall not conduct business pursuant to this division, except as may be permitted by order of the commissioner. However, the

revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(f) Fifty dollars (\$50) for investigation services in connection with each application for qualification of any person under Section 17200.8, other than investigation services under subdivision (c) of this section.

(g) A fee not to exceed twenty-five dollars (\$25) for the filing of a notice or report required by rules adopted pursuant to subdivision (a) or Section 17203.1.

(h) (1) If costs and expenses associated with the enforcement of this division, including overhead, are or will be incurred by the commissioner during the year for which the annual license fee is levied, and that will or could result in the commissioner's incurring of costs and expenses, including overhead, in excess of the costs and expenses, including overhead, budgeted for expenditure for the year in which the annual license fee is levied, then the commissioner may levy a special assessment on each escrow agent for each office or location in an amount estimated to pay for the actual costs and expenses, including overhead, in an amount not to exceed five hundred dollars (\$500) for each office or location. The commissioner shall notify each escrow agent by mail of the amount of the special assessment levied against it, and that payment of the special assessment is payable by the escrow agent within 30 days of receipt of notification by the commissioner. The funds received from the special assessment shall be deposited into the State Corporations Fund and shall be used only for the purposes for which the special assessment is made.

(2) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the special assessment, of 10 percent of the special assessment for each month or part of a month that the payment is delayed or withheld. If an escrow agent fails to pay the special assessment on or before 30 days following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company. If an order is made under this subdivision, the provisions of paragraph (5) of subdivision (e) of this section shall apply.

(3) If the amount collected pursuant to this subdivision exceeds the actual costs and expenses, including overhead, incurred in the administration and enforcement of this division and any deficit incurred, the excess shall be credited to each escrow agent on a pro rata basis.

(i) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 39. Section 21301 of the Financial Code is amended to read:

21301. (a) A license granted pursuant to Section 21300 shall be renewable the second year from the date of issue, and every other

year thereafter, upon the filing of a renewal application and compliance with the requirements of Section 21303. The Department of Justice and the chief of police, the sheriff, or, where appropriate, the police commission may charge a fee for the license renewal not to exceed the actual processing costs. The licensing authority shall collect the fee and transmit the fee and a copy of the renewed license to the Department of Justice.

(b) The license shall be subject to forfeiture by the licensing authority, and the licensee's activities as a pawnbroker shall be subject to being enjoined pursuant to Section 21302, for breach of any of the following conditions:

(1) The business shall be carried on only at the location designated on the license. The license shall designate all locations where property belonging to the business is stored. Property of the business may be stored at locations not designated on the license only with the written consent of the local licensing authority.

(2) The license or a copy thereof, certified by the licensing authority, shall be displayed on the premises in plain view of the public.

(3) The licensee shall not engage in any act that the licensee knows to be in violation of this article.

(4) The licensee shall not be convicted of an attempt to receive stolen property or other offense involving stolen property. For the purposes of this paragraph, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the chief of police, the sheriff, or, where appropriate, the police commission, is permitted to take following that conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(c) Notwithstanding subdivisions (a) and (b), no renewal application for a pawnbroker's license may be denied, nor may his or her pawnbroker's license be forfeited, solely on the grounds that the applicant violated any provision contained in Chapter 1 (commencing with Section 21000), Chapter 2 (commencing with Section 21200) of this division, or Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of Chapter 9 of Division 8, of the Business and Professions Code unless the violation demonstrates a pattern of conduct.

SEC. 40. Section 21304 of the Financial Code is amended to read:

21304. (a) As a condition precedent to the issuing of a pawnbroker's license, the applicant shall file with the issuing authority a financial statement confirming that the applicant has at least one hundred thousand dollars (\$100,000) in the form of liquid assets readily available for use in each licensed business for which the

application is made, not including real property, or, in the absence of one hundred thousand dollars (\$100,000), an applicant may post a nonrevocable surety bond in the amount of one hundred thousand dollars (\$100,000) or the applicant may, in lieu of posting a surety bond, deposit money, certificates, accounts, bonds, or notes, as provided in Section 995.710 of the Code of Civil Procedure. The financial statement shall be filed by the applicant under penalty of perjury and signed by a California certified public accountant verifying that he or she has reviewed the financial statement.

(b) This section does not apply to any person holding a secondhand dealer's license pursuant to Section 21641 or 21642 of the Business and Professions Code who is actively engaged as a pawnbroker on the effective date of this section.

SEC. 41. Section 3332 of the Food and Agricultural Code is amended to read:

3332. The board may do any of the following:

(a) Contract.

(b) Accept funds or gifts of value from the United States or any person to aid in carrying out the purposes of this part.

(c) Conduct or contract for programs, either independently or in cooperation with any individual, public or private organization, or federal, state, or local governmental agency.

(d) Establish and maintain a bank checking account or a savings and loan association account, approved by the Director of Finance in accordance with Sections 16506 and 16605 of the Government Code, for depositing funds appropriated to the California Exposition and State Fair pursuant to Section 19623 of the Business and Professions Code. The Department of Finance shall audit the account at the end of each fiscal year.

(e) Make or adopt all necessary orders, rules, or regulations for governing the activities of the California Exposition and State Fair.

(f) Delegate to the officers and employees of the California Exposition and State Fair the authority to appoint civil service personnel according to state civil service procedures.

(g) Delegate to the officers and employees of the California Exposition and State Fair the exercise of powers vested in the board as the board may deem desirable for the orderly management and operation of the California Exposition and State Fair.

(h) Appoint all necessary marshals and police to keep order and preserve peace at the California Exposition and State Fair premises on a year-round basis, who shall have the powers of peace officers specified in Section 830.2 of the Penal Code. A peace officer of the Department of the California Highway Patrol may be employed as a peace officer while off duty from his or her regular employment, subject to those conditions as may be set forth by the Commissioner of the California Highway Patrol. At least 75 percent of the persons appointed pursuant to this subdivision shall possess the basic

certificate issued by the Commission on Peace Officer Standards and Training. The remaining 25 percent may be appointed if the person has completed a Peace Officer Standards and Training certified academy or possesses a Level One Reserve Certificate (as defined in Section 832.6 of the Penal Code).

(i) Lease, with the approval of the Department of General Services, any of its property for any purpose for any period of time.

(j) Use or manage any of its property, with the approval of the Department of General Services, jointly or in connection with any lessee or sublessee, for any purpose approved by the board.

SEC. 42. Section 12648 of the Food and Agricultural Code is amended to read:

12648. (a) Notwithstanding any other provision of this code, a site within this state that has been treated with, or a plant, crop, or commodity, whether grown in this state or elsewhere, that has been treated with, or grown on a site treated with, a pesticide that is not registered for use on that plant, crop, commodity, or site is a public nuisance and may be seized by order of the director.

(b) The unlawful treatment described in subdivision (a) creates, in favor of the director, rebuttable presumptions affecting the burden of producing evidence pursuant to Section 604 of the Evidence Code as follows:

(1) That the treated plant, crop, commodity, or site, or any plant, crop, or commodity grown on the treated site, presents a hazard to human health or the environment.

(2) That the pesticide was used to gain an unfair business advantage for the owner or person in possession or control of the plant, crop, commodity, or site.

(c) The director shall provide notice to the owner or person in possession or control of the plant, crop, commodity, or site prior to seizure, unless the director has reason to believe that prior notice would result in the loss of control by the director of that plant, crop, commodity, or site, in which case notice shall be given as soon as practical, but in any event within five days of the seizure. The notice shall specify the grounds for the seizure and provide that the owner or person in possession or control, within 15 days of receipt of the notice, may request a hearing before the director to contest the seizure or rebut the presumptions specified in subdivision (b). The hearing shall be held not later than five days from the date the request of the owner or person is received by the director. The director shall render a written decision within five days of the hearing or within five days of the expiration of the time to request a hearing if no hearing was requested. The decision shall either release the plant, crop, commodity, or site from seizure or make any of the following orders:

(1) Destruction of the plant, crop, or commodity.

(2) Prohibition of harvest or sale of the plant, crop, or commodity grown on the site.

(3) Prohibition of the use or planting of the site, which may be for the period of any plant back time specified for the pesticide used on the site.

(4) Any other appropriate action or measure.

(d) Review of the decision of the director may be sought by the owner, or person in possession or control of the plant, crop, commodity, or site pursuant to Section 1094.5 of the Code of Civil Procedure.

SEC. 43. Section 12815 of the Food and Agricultural Code is amended to read:

12815. If a manufacturer, importer, or dealer in pesticides that applies for registration of pesticides has complied with this chapter and the regulations that are adopted pursuant to it, the director shall register each pesticide that is sought to be registered and issue a certificate of registration to the applicant that authorizes the manufacture and sale of the pesticide in this state.

SEC. 44. Section 13144 of the Food and Agricultural Code is amended to read:

13144. (a) Not later than December 1, 1986, the department shall establish specific numerical values for water solubility, soil adsorption coefficient (Koc), hydrolysis, aerobic and anaerobic soil metabolism, and field dissipation. The values established by the department shall be at least equal to those established by the Environmental Protection Agency. The department may revise the numerical values when the department finds that the revision is necessary to protect the groundwater of the state. The numerical values established or revised by the department shall always be at least as stringent as the values being used by the Environmental Protection Agency at the time the values are established or revised by the department.

(b) Not later than December 1, 1987, and annually thereafter, the director shall report the following information to the Legislature, the State Department of Health Services, and the board, for each pesticide registered for agricultural use:

(1) A list of each active ingredient, other specified ingredient, or degradation product of an active ingredient of a pesticide for which there is a groundwater protection data gap.

(2) A list of each pesticide that contains an active ingredient, other specified ingredients, or degradation product of an active ingredient that is greater than one or more of the numerical values established pursuant to subdivision (a), or is less than the numerical value in the case of soil adsorption coefficient, in both of the following categories:

(A) Water solubility or soil adsorption coefficient (Koc).

(B) Hydrolysis, aerobic soil metabolism, anaerobic soil metabolism, or field dissipation.

(3) For each pesticide listed pursuant to paragraph (2) for which information is available, a list of the amount sold in California during the most recent year for which sales information is available and where and for what purpose the pesticide was used, when this information is available in the pesticide use report.

(c) The department shall determine, to the extent possible, the toxicological significance of the degradation products and other specified ingredients identified pursuant to paragraph (2) of subdivision (b).

SEC. 45. Section 46003.5 of the Food and Agricultural Code is amended to read:

46003.5. (a) Following the promulgation of the national materials list by the United States Department of Agriculture pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Secs. 6501 to 6522, incl.), the secretary, in consultation with the Organic Food Advisory Board, shall adopt regulations listing specific substances that are in compliance or not in compliance with the definition of "prohibited materials," as defined in subdivision (p) of Section 110815 of the Health and Safety Code, for use in the production and handling of organic foods.

Prior to the promulgation of the national materials list by the United States Department of Agriculture pursuant to the federal Organic Foods Production Act of 1990, the Organic Food Advisory Board, in consultation with the secretary, shall determine which, if any, substance may be allowed for use in the production and handling of organic foods in this state. Within 90 days of promulgation of the national materials list by the United States Department of Agriculture, the Organic Food Advisory Board, in consultation with the secretary, shall determine which, if any, substance allowed for use by the national materials list may be allowed for use in the production and handling of organic foods in this state.

(b) Prior to adoption of these regulations, the secretary shall issue administratively a preliminary, nonexhaustive list of materials that are in compliance or not in compliance with subdivision (p) of Section 110815 of the Health and Safety Code based on the listings of permitted materials published by California Certified Organic Farmers, the Organic Foods Production Association of North America, and the Departments of Agriculture of the States of Oregon and Washington.

SEC. 46. Section 951 of the Government Code is amended to read:

951. Notwithstanding Section 425.10 of the Code of Civil Procedure, any complaint for damages in any civil action brought against a publicly elected or appointed state or local officer, in his or her individual capacity, where the alleged injury is proximately caused by the officer acting under color of law, shall allege with particularity sufficient material facts to establish the individual

liability of the publicly elected or appointed state or local officer and the plaintiff's right to recover therefrom.

SEC. 47. Section 8670.7 of the Government Code is amended to read:

8670.7. (a) The administrator, subject to the Governor, has the primary authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in the marine waters of the state, in accordance with any applicable marine facility or vessel contingency plan and the state oil spill contingency plan. The administrator shall cooperate with any federal on-scene coordinator, as specified in the National Contingency Plan.

(b) The administrator shall implement the state oil spill contingency plan, required pursuant to Section 8574.1, to the fullest extent possible.

(c) The administrator shall do both of the following:

(1) Be present at the location of any oil spill of more than 100,000 gallons in marine waters, as soon as possible after notice of the discharge.

(2) Ensure that persons trained in oil spill response and cleanup, whether employed by the responsible party, the state, or another private or public person or entity, are onsite to respond to, contain, and clean up any oil spill in marine waters, as soon as possible after notice of the discharge.

(d) Throughout the response and cleanup process, the administrator shall apprise the members of the State Interagency Oil Spill Committee, the air quality management district or air pollution control district having jurisdiction over the area in which the oil spill occurred, and the local government entities that are affected by the spill.

(e) The administrator, with the assistance of the State Fire Marshal, the State Lands Commission, and the federal on-scene coordinator, shall determine the cause and amount of the discharge.

(f) The administrator shall have the state authority over the use of all response methods, including, but not limited to, in situ burning, dispersants, and any oil spill cleanup agents in connection with an oil discharge. The administrator shall consult with the federal on-scene coordinator prior to exercising authority under this subdivision.

(g) (1) The administrator shall conduct workshops, consistent with the intent of this chapter, with the participation of appropriate local, state, and federal agencies, including the State Air Resources Board, air pollution control districts, and air quality management districts, and affected private organizations, on the subject of oil spill response technologies, including in situ burning. The workshops shall review the latest research and findings regarding the efficacy and toxicity of oil spill cleanup agents and other technologies, their potential public health and safety and environmental impacts, and

any other relevant factors concerning their use in oil spill response. In conducting these workshops, the administrator shall solicit the views of all participating parties concerning the use of these technologies, with particular attention to any special considerations that apply to coastal areas and marine waters of the state.

(2) Within 90 days following the conclusion of the workshops, or by June 30, 1996, whichever occurs first, the administrator shall publish decision guidelines on the policies, procedures, and parameters for the use of in situ burning, which may be implemented in the event of an oil spill. The administrator shall, by whichever of those dates occurs first, additionally publish a schedule for future workshops to be held to develop guidelines for the use of other identified technologies.

(h) (1) The administrator shall ensure that, as part of the response to any significant spill, biologists or other personnel are present and provided any support and funding necessary and appropriate for the assessment of damages to natural resources and for the collection of data and other evidence that may help in determining and recovering damages.

(2) (A) The administrator shall coordinate all actions required by state or local agencies to assess injury to, and provide full mitigation for injury to, or to restore, rehabilitate, or replace, natural resources, including wildlife, fisheries, wildlife or fisheries habitat, and beaches and other coastal areas, that are damaged by an oil spill. For purposes of this subparagraph, "actions required by state or local agencies" include, but are not limited to, actions required by state trustees under Section 1006 of the Oil Pollution Act of 1990 (33 U.S.C. Sec. 2706) and actions required pursuant to Section 8670.61.5.

(B) The responsible party shall be liable for all coordination costs incurred by the administrator.

(3) Nothing in this subdivision shall be construed to give the administrator any authority to administer state or local laws or to limit the authority of another state or local agency to implement and enforce state or local laws under its jurisdiction, nor does this subdivision limit the authority or duties of the administrator under this chapter or limit the authority of an agency to enforce existing permits or permit conditions.

(i) (1) The administrator shall enter into a memorandum of understanding with the executive director of the State Water Resources Control Board, acting for the State Water Resources Control Board and the California regional water quality control boards, and with the approval of the State Water Resources Control Board, to address discharges, other than dispersants, that are incidental to, or directly associated with, the response, containment, and cleanup of an existing or threatened oil spill conducted pursuant to this chapter.

(2) The memorandum of understanding entered into pursuant to paragraph (1) shall address any permits, requirements, or authorizations that are required for the specified discharges. The memorandum of understanding shall be consistent with requirements that protect state water quality and beneficial uses and with any applicable provisions of the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000), Water Code) or the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and shall expedite efficient oil spill response.

(3) The memorandum of understanding shall be completed by May 15, 1994.

SEC. 48. Section 8670.13.2 of the Government Code is amended to read:

8670.13.2. Prior to January 1, 1997, the administrator shall prepare regulations regarding licensing of oil spill cleanup agents that are substantially the same as regulations adopted by the State Water Resources Control Board that were in effect on December 31, 1995, as set forth in Chapter 10 (commencing with Section 2300) of Title 23 of the California Code of Regulations. The authority of the administrator shall be substituted for the authority of the board and cross references shall be corrected. The administrator shall submit these regulations to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations. These regulations are exempt from the Administrative Procedure Act. The regulations shall become effective upon filing. The regulations shall remain in effect until a date of two years from the date of filing with the Secretary of State or until the date new regulations adopted by the administrator in accordance with Section 8670.13.1 are filed with the Secretary of State, whichever date occurs earlier.

SEC. 49. Section 8670.21 of the Government Code is amended to read:

8670.21. (a) As used in this section, the following terms have the following meaning:

(1) "Vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

(2) "VTS system" means a vessel traffic service system.

(b) The administrator shall negotiate an agreement with the Coast Guard, appropriate port agencies, or appropriate organizations, for a VTS system to protect the harbors of this state. The administrator may include in the agreement provisions for vessel traffic monitoring and communications systems for areas of the coast outside of harbors or negotiate a separate agreement for that purpose. The purpose of a VTS system and a vessel traffic monitoring and communications system shall be to aid navigation by providing satellite tracking, radar, or other information regarding ship locations and traffic to prevent collisions and groundings.

(c) The administrator shall, in consultation with the Coast Guard, develop a plan for implementing VTS systems pursuant to subdivision (b) for the Ports of Los Angeles and Long Beach, the Harbors of San Francisco, San Pablo, and Suisun Bays, the Santa Barbara Channel, and any other area where establishing a VTS system or a vessel monitoring and communications system is recommended by the Coast Guard. The plan shall provide for the areas described in this subdivision, and for any other system and areas that are recommended by the Coast Guard, or recommended by the administrator and approved by the Coast Guard. Only systems that will be operated by the Coast Guard, or that will have direct communication with a Coast Guard officer who has Captain of the Port enforcement authority, shall be included in the plan. The plan shall be amended periodically to reflect any changes in Coast Guard recommendations or operations, and any changes in the agreements entered into pursuant to subdivision (b). The plan shall, to the extent allowable given federal requirements, provide for the best achievable protection.

(d) (1) The administrator shall attempt to provide funding for VTS systems and vessel monitoring and communications systems through voluntary funding, or services in kind, provided by the maritime industry. If agreement on voluntary funding or services in kind cannot be reached, the administrator may establish a fee system that reflects the commercial maritime activity of each of the respective harbors or areas for which a VTS system or a vessel monitoring and communications system is established. Using that fee system, the administrator shall fund VTS systems and vessel monitoring and communications systems.

(2) The money collected pursuant to this subdivision shall be deposited in the Vessel Safety Account, which is hereby created in the Oil Spill Prevention and Administration Fund. The money in the Vessel Safety Account is hereby continuously appropriated for the sole purpose of funding VTS systems and vessel monitoring and communications systems. Other than the fees imposed pursuant to this subdivision that are deposited in the Vessel Safety Account, no funds from the Oil Spill Prevention and Administration Fund may be used to pay for VTS systems or vessel traffic monitoring and communications systems.

(3) The administrator shall adopt regulations to implement this subdivision. The administrator may adopt regulations prohibiting barges and tankers from accepting or unloading oil at marine terminals if a barge or tanker is not in compliance with required VTS system or vessel traffic monitoring and communications system equipment.

(e) If a VTS system covers waters outside the jurisdiction of a local port authority, the administrator may grant such money as is determined to be necessary for the purchase and installation of

equipment required for the establishment or expansion of the VTS system. Those grants may be made from the Oil Spill Response Trust Fund in accordance with Section 8670.49, as individual and nonrecurring appropriations through the budget process, but shall not exceed the amount of interest earned from money in that fund.

(f) (1) The Marine Exchange of Los Angeles-Long Beach Harbor, Inc., a corporation organized under the Non-Profit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), may operate a VTS system in the VTS area described in Section 445 of the Harbors and Navigation Code if the VTS system is approved by the Coast Guard and certified by the administrator as meeting the requirements of this chapter. The marine exchange shall cooperate fully with the administrator in the development and implementation of that VTS system. Upon certification by the administrator that the Coast Guard has commenced operation of a VTS system for the VTS area, the authorization for the marine exchange to operate a VTS system shall terminate.

(2) The Port of Los Angeles and the Port of Long Beach may impose fees upon all covered vessels, as defined in Section 445.5 of the Harbors and Navigation Code, for the funding of the VTS system operated by the marine exchange.

(3) No vessel that is required to comply with Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code shall assert any claim against the marine exchange or any officer, director, employee, or representative of the marine exchange for any damage, loss, or expense, including any rights of indemnity or other rights of any kind, sustained by that vessel or its owners, agents, charterers, operators, crew, or third parties arising out of, or connected with, directly or indirectly, the marine exchange's operation of the vessel traffic service, even though resulting in whole or in part from the negligent acts or omissions of the marine exchange or of an officer, director, employee, or representative of the marine exchange.

(4) Each vessel required to comply with Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code shall defend, indemnify, and hold harmless the marine exchange and its officers, directors, employees, and representatives from any and all claims, suits, or actions of any nature by whomsoever asserted, even though resulting or alleged to have resulted from negligent acts or omissions of the marine exchange or of an officer, director, employee, or representative of the marine exchange.

(5) Nothing in this subdivision affects any liability or rights that may arise by reason of the gross negligence or intentional or willful misconduct of the marine exchange or of an officer, director, employee, or representative of the marine exchange in the operation

of the VTS system, including any liability pursuant to subdivision (c) of Section 449.5 of the Harbors and Navigation Code.

(6) The marine exchange and its officers and directors are subject to Section 5047.5 of the Corporations Code to the extent that the marine exchange meets the criteria specified in that section.

(7) Nothing in this section shall be deemed to include the marine exchange or its officers, directors, employees, or representatives within the definition of "responsible party" pursuant to subdivision (q) of Section 8670.3 for purposes of this chapter.

(8) On or before January 1, 1997, and every two years thereafter, the marine exchange shall submit a report containing a complete description of the VTS system operated by the marine exchange to the administrator. Upon receiving that biennial report, the administrator shall determine, after a public hearing, whether the elements and operation of the VTS system are consistent with the Harbor Safety Plan for the Ports of Los Angeles and Long Beach developed pursuant to Section 8670.23.1 and the standards for the statewide vessel traffic service systems plan developed pursuant to subdivision (c). If the administrator determines that the VTS system is inconsistent with the Harbor Safety Plan for the Ports of Los Angeles and Long Beach developed pursuant to Section 8670.23.1 or with the statewide vessel traffic service systems plan developed pursuant to subdivision (c), the administrator shall issue an order to the marine exchange specifying modifications to the VTS system to eliminate the inconsistencies. If the marine exchange has not complied with such an order within six months of issuance, the administrator may, in addition to, or in lieu of, any other enforcement action authorized by this chapter or Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code, and after a public hearing, administratively revoke the authorization for the marine exchange to operate a VTS system. If authorization for the marine exchange to operate a VTS system is revoked, the administrator shall take any action necessary to expeditiously establish a VTS system for the VTS area described in Section 445 of the Harbors and Navigation Code. The action may include the assessment of fees on vessels, port users, and ports, and needed expenditures, as provided in subdivision (d).

(g) Any VTS system or vessel traffic monitoring and communications system that is determined to be necessary by the administrator, but has not been approved by the Coast Guard, may not be included in the plan until that inclusion has been given specific approval by the Legislature, by statute.

(h) It is the intent of the Legislature that VTS systems and vessel traffic monitoring and communications systems be completed and operated by the Coast Guard, except that, with respect to the VTS area described in Section 445 of the Harbors and Navigation Code,

a VTS system may be operated by the Marine Exchange of Los Angeles-Long Beach, Inc., pursuant to subdivision (f).

SEC. 50. Section 11504 of the Government Code is amended to read:

11504. A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought. The statement of issues shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief. The statement of issues shall be served in the same manner as an accusation, except that, if the hearing is held at the request of the respondent, Sections 11505 and 11506 shall not apply and the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in Section 11509. Unless a statement to respondent is served pursuant to Section 11505, a copy of Sections 11507.5, 11507.6, and 11507.7, and the name and address of the person to whom requests permitted by Section 11505 may be made, shall be served with the statement of issues.

SEC. 51. Section 15363.7 of the Government Code is amended to read:

15363.7. The secretary shall include, as part of the annual report required pursuant to subdivision (c) of Section 15363.6, a report on the foreign and domestic business development marketing programs administered by the agency.

SEC. 52. Section 15379.28 of the Government Code is amended to read:

15379.28. (a) The chancellor's office shall oversee auditing, and provide systemwide oversight, for the economic development program. In carrying out these functions, the board of governors and the chancellor's office shall perform both of the following activities:

(1) Review and assess whether competitive awards were utilized for economic development grants and contracts in accordance with board policy.

(2) Review economic development program expenditures to determine the extent to which regional economic development and training needs are being met, including the needs of emerging industries.

(b) (1) As a condition of receiving economic development funds, each community college or community college district shall agree to complete an audit of the funds received.

(2) An audit performed pursuant to this section shall adhere to generally accepted accounting principles, and shall include, but not necessarily be limited to, activities to ensure compliance with all state laws and regulations concerning each of the following:

(A) Procedures for subcontracts or grant amendments, including appropriate authorization by the chancellor's office.

(B) Procurement procedures.

(C) Travel authorization.

(D) Hiring procedures.

(E) Appropriate use of fiscal agents.

(c) An audit performed pursuant to this section may be completed either by the chancellor's office or by a certified public accountant.

(d) (1) Notwithstanding any other provision of law, the Director of Finance is authorized to increase the reimbursement authority of Schedule (e) of Item 6870-001-0001 of Section 2.00 of the Budget Act of 1996 (Ch. 162, Stats. 1996) by up to two hundred fifty thousand dollars (\$250,000) to allow the chancellor's office to contract with community colleges or community college districts for the performance of audits pursuant to this section.

(2) Audits may not be conducted nor staff hired by the chancellor's office pursuant to this section unless and until the Director of Finance certifies that a sufficient number of community colleges or community college districts have entered into service agreements with the chancellor's office to fully offset the estimated cost of conducting audits of the economic development program pursuant to this section.

SBC. 53. Section 30054 of the Government Code is amended to read:

30054. (a) For the 1993-94, 1994-95, and 1995-96 fiscal years only, the amounts allocated pursuant to Sections 30052 and 30053 shall be available only for public safety services, and shall be allocated in each qualified county to local agencies as provided in subdivision (b).

(b) (1) Each county shall create a Public Safety Augmentation Fund that shall consist of all revenues received by the county as a result of the allocations pursuant to Sections 30052 and 30053.

(2) Except as provided in paragraph (3) or (4), for each of the 1993-94, 1994-95, and 1995-96 fiscal years only, the augmentation fund described in paragraph (1) shall be allocated among the cities in the county that provide public safety services as follows:

(A) The auditor shall determine an allocation factor for each city within the county, the numerator of which shall be the amount of revenue shifted from that city to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993-94 fiscal year, less the amount of vehicle license fee revenues allocated to the city pursuant to Section 11005.4 of the Revenue and Taxation Code for the 1993-94 fiscal year, and the denominator of which shall be the amount of revenue shifted from

all cities in the county and from the county to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993-94 fiscal year, less the amount of vehicle license fee revenues allocated to the county and all cities in the county pursuant to Section 11005.4 of the Revenue and Taxation Code for the 1993-94 fiscal year.

(B) The auditor shall multiply the amount in the augmentation fund by the allocation factor determined in subparagraph (A) for each city.

(C) The allocation factor to be used for each city for the 1993-94 fiscal year may not result in an allocation that exceeds 50 percent of the difference between the following amounts:

(i) The amount by which the city's allocation of property tax revenues was reduced pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993-94 fiscal year.

(ii) The amount of vehicle license fee revenues allocated to the city pursuant to Section 11005.4 of the Revenue and Taxation Code for the 1993-94 fiscal year.

(D) The allocation factor determined pursuant to this paragraph for the 1993-94 fiscal year shall also be applied in each fiscal year thereafter.

(3) Notwithstanding paragraph (2), for each of the 1993-94, 1994-95, and 1995-96 fiscal years only, the amount in the augmentation fund established pursuant to paragraph (1) of each county described in subparagraph (C) shall be allocated to the cities in the county that provide public safety services as follows:

(A) The auditor shall determine an allocation factor for each city within the county, the numerator of which shall be the amount of the revenue shifted from that city to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993-94 fiscal year, and the denominator of which shall be the amount of revenue shifted from all cities in the county to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993-94 fiscal year.

(B) The auditor shall multiply 5 percent of the amount in the augmentation fund established pursuant to paragraph (1) by the allocation factor determined for each city in subparagraph (A). The amount so computed for each city shall be allocated to that city.

(C) This paragraph applies only to the Counties of Fresno, Kings, Merced, San Bernardino, San Diego, San Joaquin, Solano, and Yolo.

(D) This paragraph shall apply to a particular county described in subparagraph (C) only if the total amount allocated under this paragraph to all of the cities therein that provide public safety services is less than the amount that would otherwise be allocated to all of those cities pursuant to paragraph (2).

(4) Notwithstanding paragraph (2), for each of the 1993-94, 1994-95, and 1995-96 fiscal years only, the amount in the augmentation fund established pursuant to paragraph (1) for the County of Alameda shall be allocated to the cities in the County of Alameda that provide public safety services as follows:

(A) The auditor shall determine an allocation factor for each city within the county, the numerator of which shall be the amount of the revenue shifted from that city to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993-94 fiscal year, and the denominator of which shall be the amount of revenue shifted from all cities in the County of Alameda to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993-94 fiscal year.

(B) The auditor shall multiply 6.1 percent of the amount in the augmentation fund established pursuant to paragraph (1) by the allocation factor determined for each city in subparagraph (A). The amount so computed for each city shall be allocated to that city.

(5) All moneys in the Public Safety Augmentation Fund not allocated to any city within the county pursuant to paragraph (2), (3), or (4) shall be allocated to the county.

SEC. 54. Section 30061 of the Government Code is amended to read:

30061. (a) There shall be established in each county treasury a Supplemental Law Enforcement Services Fund (SLESF), to receive all amounts allocated to a county for purposes of implementing this chapter.

(b) In any fiscal year for which a county receives money to be expended for the implementation of this chapter, the county auditor shall allocate moneys in the county's Supplemental Law Enforcement Services Fund (SLESF), including any interest or other return earned on the investment of those moneys, within 30 days of the deposit of those moneys into the fund, and shall allocate those moneys in accordance with the following requirements:

(1) Twelve and one-half percent to the county sheriff for county jail construction and operation. In the case of Madera, Napa, and Santa Clara Counties, this allocation shall be made to the county director or chief of corrections.

(2) Twelve and one-half percent to the district attorney for criminal prosecution.

(3) Seventy-five percent to the county and the cities within the county, and, in the case of the San Mateo, Kern, Siskiyou, and Contra Costa Counties, also to the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, and the Kensington Police Protection and Community Services District, in accordance with the relative

population of the cities within the county and the unincorporated area of the county, and the Broadmoor Police Protection District in the County of San Mateo, the Bear Valley Community Services District and the Stallion Springs Community Services District in Kern County, the Lake Shastina Community Services District in Siskiyou County, and the Kensington Police Protection and Community Services District in Contra Costa County, as specified in the most recent January estimate by the population research unit of the Department of Finance. No person residing within the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, or the Kensington Police Protection and Community Services District shall also be counted as residing within the unincorporated area of the County of San Mateo, Kern, Siskiyou, or Contra Costa, or within any city located within those counties. Moneys allocated to the county pursuant to this subdivision shall be retained in the county SLESF, and moneys allocated to a city pursuant to this subdivision shall be deposited in a SLESF established in the city treasury.

(c) Subject to subdivision (d), for each fiscal year in which the county and each city, and the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, and the Kensington Police Protection and Community Services District, receive moneys pursuant to paragraph (3) of subdivision (b), the county, each city, and each district specified in this subdivision shall appropriate those moneys in accordance with the following procedures:

(1) In the case of the county, the county board of supervisors shall appropriate existing and anticipated moneys exclusively to provide front line law enforcement services, other than those services specified in paragraphs (1) and (2) of subdivision (b), in the unincorporated areas of the county, in response to written requests submitted to the board by the county sheriff and the district attorney. Any request submitted pursuant to this paragraph shall specify the front line law enforcement needs of the requesting entity, and those personnel, equipment, and programs that are necessary to meet those needs. The board shall, at a public hearing held in September in each year that the Legislature appropriates funds for purposes of this chapter, consider and determine each submitted request within 60 days of receipt, pursuant to the decision of a majority of a quorum present. The board shall consider these written requests separate and apart from the process applicable to proposed allocations of the county general fund.

(2) In the case of a city, the city council shall appropriate existing and anticipated moneys exclusively to fund front line municipal police services, in accordance with written requests submitted by the

chief of police of that city or the chief administrator of the law enforcement agency that provides police services for that city. These written requests shall be acted upon by the city council in the same manner as specified in paragraph (1) for county appropriations.

(3) In the case of the Broadmoor Police Protection District within the County of San Mateo, the Bear Valley Community Services District or the Stallion Springs Community Services District within Kern County, the Lake Shastina Community Services District within Siskiyou County, or the Kensington Police Protection and Community Services District within Contra Costa County, the legislative body of that special district shall appropriate existing and anticipated moneys exclusively to fund front line municipal police services, in accordance with written requests submitted by the chief administrator of the law enforcement agency that provides police services for that special district. These written requests shall be acted upon by the legislative body in the same manner specified in paragraph (1) for county appropriations.

(d) For each fiscal year in which the county, a city, or the Broadmoor Police Protection District within the County of San Mateo, the Bear Valley Community Services District or the Stallion Springs Community Services District within Kern County, the Lake Shastina Community Services District within Siskiyou County, or the Kensington Police Protection and Community Services District within Contra Costa County receives any moneys pursuant to this chapter, in no event shall the governing body of any of those recipient agencies subsequently alter any previous, valid appropriation by that body, for that same fiscal year, of moneys allocated to the county or city pursuant to paragraph (3) of subdivision (b).

SEC. 55. Section 30064 of the Government Code is amended to read:

30064. (a) There is in each county a Supplemental Law Enforcement Oversight Committee (SLEOC), consisting of five members as follows:

- (1) One municipal police chief.
- (2) The county sheriff.
- (3) The district attorney.
- (4) The county's executive officer.
- (5) One city manager.

(b) (1) The cities in each county shall organize as a city selection committee for the purposes of appointing a city manager and a municipal police chief to the SLEOC. Each appointment shall be made by not less than a majority of all the cities in the county having not less than a majority of the population of all the cities in the county. For purposes of this paragraph, population figures shall be determined on the basis of the most recent census data developed by the Department of Finance.

(2) The SLEOC shall determine whether recipient entities have expended moneys received from the Supplemental Law Enforcement Services Fund (SLESF) in compliance with this chapter. For this purpose, the SLEOC shall at least annually review the expenditure of SLESF funds by city police departments, the county sheriff, and the district attorney, and shall make its annual review report available to the public.

SEC. 56. Section 50030 of the Government Code is amended to read:

50030. Any permit fee imposed by a city, including a chartered city, a county, or a city and county, for the placement, installation, repair, or upgrading of telecommunications facilities such as lines, poles, or antennas by a telephone corporation that has obtained all required authorizations to provide telecommunications services from the Public Utilities Commission and the Federal Communications Commission, shall not exceed the reasonable costs of providing the service for which the fee is charged and shall not be levied for general revenue purposes.

SEC. 57. Section 65850.2 of the Government Code is amended to read:

65850.2. (a) Each city and each county shall include, in its information list compiled pursuant to Section 65940 for development projects, or application form for projects that do not require a development permit other than a building permit, both of the following:

(1) The requirement that the owner or authorized agent shall indicate whether the owner or authorized agent will need to comply with the applicable requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code or the requirements for a permit for construction or modification from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county.

(2) The requirement that the owner or authorized agent certify whether or not the proposed project will have more than a threshold quantity of a regulated substance in a process or will contain a source or modified source of hazardous air emissions.

(b) A city or county shall not find the application complete pursuant to Section 65943 or approve a development project or a building permit for a project that does not require a development permit other than a building permit, in which a regulated substance will be present in a process in quantities greater than the applicable threshold quantity, unless the owner or authorized agent for the project first obtains, from the administering agency with jurisdiction over the facility, a notice of requirement to comply with, or determination of exemption from, the requirement to prepare and submit an RMP. Within five days of submitting the project

application to the city or county, the applicant shall submit the information required pursuant to paragraph (2) of subdivision (a) to the administering agency. This notice of requirement to comply with, or determination of exemption from, the requirement for an RMP shall be provided by the administering agency to the applicant, and the applicant shall provide the notice to the city or county within 25 days of the administering agency receiving adequate information from the applicant to make a determination as to the requirement for an RMP. The requirement to submit an RMP to the administering agency shall be met prior to the issuance of a certificate of occupancy or its substantial equivalent. The owner or authorized agent shall submit, to the city or county, certification from the air pollution control officer that the owner or authorized agent has provided the disclosures required pursuant to Section 42303 of the Health and Safety Code.

(c) A city or county shall not issue a final certificate of occupancy or its substantial equivalent unless there is verification from the administering agency, if required by law, that the owner or authorized agent has met, or is meeting, the applicable requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code, and the requirements for a permit, if required by law, from the air pollution control district or air quality management district, exercising jurisdiction in the area governed by the city or county or has provided proof from the appropriate district that the permit requirements do not apply to the owner or authorized agent.

(d) The city or county, after considering the recommendations of the administering agency or air pollution control district or air quality management district, shall decide whether, and under what conditions, to allow construction of the site.

(e) Nothing in this section limits any existing authority of a district to require compliance with its rules and regulations.

(f) Counties and cities may adopt a schedule of fees for applications for compliance with this section sufficient to recover their reasonable costs of carrying out this section. Those fees shall be used only for the implementation of this section.

(g) As used in this section, the following terms have the following meaning:

(1) "Administering agency," "process," "regulated substance," "RMP," and "threshold quantity" have the same meaning as set forth for those terms in Section 25532 of the Health and Safety Code.

(2) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, "hazardous air emissions" also means emissions into the ambient air of any substance

identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(h) Any misrepresentation of information required by this section shall be grounds for denial, suspension, or revocation of project approval or permit issuance. The owner or authorized agent required to comply with this section shall notify all future occupants of their potential duty to comply with the requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(i) This section does not apply to applications solely for residential construction.

SEC. 58. Section 1226 of the Health and Safety Code is amended to read:

1226. (a) The regulations shall prescribe the kinds of services that may be provided by clinics in each category of licensure and shall prescribe minimum standards of adequacy, safety, and sanitation of the physical plant and equipment, minimum standards for staffing with duly qualified personnel, and minimum standards for providing the services offered. These minimum standards shall be based on the type of facility, the needs of the patients served, and the types and levels of services provided.

(b) The Office of Statewide Health Planning and Development, in consultation with the Community Clinics Advisory Committee, shall prescribe minimum construction standards of adequacy and safety for the physical plant of clinics as found in the California Building Standards Code.

(c) A city or county, as applicable, shall have plan review and building inspection responsibilities for the construction or alteration of buildings described in paragraph (1) and paragraph (2) of subdivision (b) of Section 1204 and shall apply the provisions of the latest edition of the California Building Standards Code in conducting these plan review responsibilities.

Upon the initial submittal to a city or county by the governing authority or owner of these clinics for plan review and building inspection services, the city or county shall reply in writing to the clinic whether or not the plan review by the city or county will include a certification that the clinic project submitted for plan review meets the clinic standards set forth in the California Building Standards Code.

If the city or county indicates that its review will include this certification, it shall do all of the following:

(1) Apply the applicable clinic provisions of the latest edition of the California Building Standards Code.

(2) Certify in writing to the applicant, within 30 days of completion of construction, whether or not these standards have been met.

(d) If, upon initial submittal, the city or county indicates that its plan review will not include this certification, the governing authority or owner of the clinic shall submit the plans to the Office of Statewide Health Planning and Development, which shall review the plans for certification whether or not the clinic project meets the standards, as propounded by the office, in the California Building Standards Code.

(e) When the office performs review for certification, the office shall charge a fee in an amount that does not exceed its actual costs.

(f) The office of the State Fire Marshal shall prescribe minimum safety standards for fire and life safety in surgical clinics.

(g) Notwithstanding subdivision (c), the governing authority or owner of a clinic may request the office to perform plan review services for buildings described in subdivision (c). If the office agrees to perform these services, after consultation with the local building official, the office shall charge an amount not to exceed its actual costs. The construction or alteration of these buildings shall conform to the applicable provisions of the latest edition of the California Building Standards Code for purposes of the plan review by the office pursuant to this subdivision.

(h) Regulations adopted pursuant to this chapter establishing standards for laboratory services shall not apply to any clinic that operates a clinical laboratory licensed pursuant to Section 1265 of the Business and Professions Code.

SBC. 59. Section 1250.2 of the Health and Safety Code is amended to read:

1250.2. (a) As defined in Section 1250, "health facility" includes a "psychiatric health facility," defined to mean a health facility, licensed by the State Department of Mental Health, that provides 24-hour inpatient care for mentally disordered, incompetent, or other persons described in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code. This care shall include, but not be limited to, the following basic services: psychiatry, clinical psychology, psychiatric nursing, social work, rehabilitation, drug administration, and appropriate food services for those persons whose physical health needs can be met in an affiliated hospital or in outpatient settings.

It is the intent of the Legislature that the psychiatric health facility shall provide a distinct type of service to psychiatric patients in a 24-hour acute inpatient setting. The State Department of Mental Health shall require regular utilization reviews of admission and discharge criteria and lengths of stay in order to assure that these patients are moved to less restrictive levels of care as soon as appropriate.

(b) The State Department of Mental Health may issue a special permit to a psychiatric health facility for it to provide structured outpatient services (commonly referred to as SOPS) consisting of

morning, afternoon, or full daytime organized programs, not exceeding 10 hours, for acute daytime care for patients admitted to the facility. This subdivision shall not be construed as requiring a psychiatric health facility to apply for a special permit to provide these alternative levels of care.

The Legislature recognizes that, with access to structured outpatient services, as an alternative to 24-hour inpatient care, certain patients would be provided with effective intervention and less restrictive levels of care. The Legislature further recognizes that, for certain patients, the less restrictive levels of care eliminate the need for inpatient care, enable earlier discharge from inpatient care by providing a continuum of care with effective aftercare services, or reduce or prevent the need for a subsequent readmission to inpatient care.

(c) Any reference in any statute to Section 1250 of the Health and Safety Code shall be deemed and construed to also be a reference to this section.

(d) Notwithstanding any other provision of law, and to the extent consistent with federal law, a psychiatric health facility shall be eligible to participate in the medicare program under Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.), and the medicaid program under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), if all of the following conditions are met:

(1) The facility is a licensed facility.

(2) The facility is in compliance with all related statutes and regulations enforced by the State Department of Mental Health, including regulations contained in Chapter 9 (commencing with Section 77001) of Division 5 of Title 22 of the California Code of Regulations.

(3) The facility meets the definitions and requirements contained in subdivisions (e) and (f) of Section 1861 of the federal Social Security Act (42 U.S.C. Sec. 1395x (e) and (f)), including the approval process specified in Section 1861(e)(7)(B) of the Social Security Act (42 U.S.C. Sec. 1395x(e)(7)(B)), which requires that the state agency responsible for licensing hospitals has assured that the facility meets licensing requirements.

(4) The facility meets the conditions of participation for hospitals pursuant to Part 482 of Title 42 of the Code of Federal Regulations.

SEC. 60. Section 1367 of the Health and Safety Code is amended to read:

1367. Each health care service plan and, where applicable, each specialized health care service plan, shall meet the following requirements:

(a) All facilities located in this state, including, but not limited to, clinics, hospitals, and skilled nursing facilities to be utilized by the plan, shall be licensed by the State Department of Health Services, where licensure is required by law. Facilities not located in this state

shall conform to all licensing and other requirements of the jurisdiction in which they are located.

(b) All personnel employed by or under contract to the plan shall be licensed or certified by their respective board or agency, where licensure or certification is required by law.

(c) All equipment required to be licensed or registered by law shall be so licensed or registered and the personnel operating that equipment shall be licensed or certified as required by law.

(d) The plan shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate, consistent with good professional practice.

(e) (1) All services shall be readily available at reasonable times to all enrollees. To the extent feasible, the plan shall make all services readily accessible to all enrollees.

(2) To the extent that telemedicine services are appropriately provided through telemedicine, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, these services shall be considered in determining compliance with Section 1300.67.2 of Title 10 of the California Code of Regulations.

(f) The plan shall employ and utilize allied health manpower for the furnishing of services to the extent permitted by law and consistent with good medical practice.

(g) The plan shall have the organizational and administrative capacity to provide services to subscribers and enrollees. The plan shall be able to demonstrate to the department that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

(h) All contracts with subscribers and enrollees, including group contracts, and all contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the plan, shall be fair, reasonable, and consistent with the objectives of this chapter. All contracts with providers shall contain provisions requiring a dispute resolution mechanism under which providers may submit disputes to the plan, and requiring the plan to inform its providers upon contracting with the plan, or upon change to these provisions, of the procedures for processing and resolving disputes, including the location and telephone number where information regarding disputes may be submitted.

(i) Each health care service plan contract shall provide to subscribers and enrollees all of the basic health care services included in subdivision (b) of Section 1345, except that the commissioner may, for good cause, by rule or order exempt a plan contract or any class of plan contracts from that requirement. The commissioner shall by rule define the scope of each basic health care service required to be provided by a health care service plan as a minimum for licensure under this chapter. Nothing in this chapter prohibits a health care

service plan from charging subscribers or enrollees a copayment or a deductible for a basic health care service or from setting forth, by contract, limitations on maximum coverage of basic health care services, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the commissioner and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

Nothing in this section shall be construed to permit the commissioner to establish the rates charged subscribers and enrollees for contractual health care services.

The enforcement by the commissioner of Article 3.1 (commencing with Section 1357) shall not be deemed to establish the rates charged subscribers and enrollees for contractual health care services.

SEC. 61. Section 1585 of the Health and Safety Code is amended to read:

1585. (a) The governing board of an adult day health center having final authority and responsibility for conduct of the center shall be comprised of four or more persons, at least one-half of whom shall be recipients of the services of the adult day health center, relatives of the recipients, or representatives of community organizations with particular interest in programs for the elderly.

(b) The director shall, in individual cases, grant exceptions from the requirements of this section for applicants if both of the following conditions are met:

(1) The applicant delegates primary responsibility for supervision of its adult day health program to a special board meeting the compositional requirements of this section.

(2) The special board reviews and recommends to the governing board of the applicant the budget, personnel, and subcontractors of the adult day health care program.

(c) No member of the governing board or a special board described in subdivision (b), nor any member of the immediate family of that board member, may have any direct or indirect interest in any contract for supplying services to the adult day health center.

SEC. 62. Section 11527.3 of the Health and Safety Code is amended and renumbered to read:

115271.3. If the state receives federal approval to implement and enforce emission standards for radionuclides pursuant to Section 115271.2, the department shall be responsible for the control of emissions of radionuclides into the air. However, nothing in this article shall be construed in any way to give the department any authority to regulate, or be construed to apply to, air emissions from nuclear powerplants that are licensed and regulated by the United States Nuclear Regulatory Commission.

SEC. 63. Section 11758.46 of the Health and Safety Code is amended to read:

11758.46. (a) For purposes of this section, "drug-Medi-Cal services" means all of the following services, administered by the department, and to the extent consistent with state and federal law:

(1) Narcotic treatment program services, as set forth in Section 11758.42.

(2) Day care habilitative services.

(3) Perinatal residential services for pregnant women and women in the postpartum period.

(4) Naltrexone services.

(5) Outpatient drug-free services.

(b) (1) By July 1, 1997, and annually thereafter, the department shall publish procedures for contracting for drug-Medi-Cal services with certified providers and for claiming payments, including procedures and specifications for electronic data submission for services rendered.

(2) By July 1, 1997, the department, county alcohol and drug program administrators, and alcohol and drug service providers shall automate the claiming process and the process for the submission of specific data required in connection with reimbursement for drug-Medi-Cal services, except that this requirement applies only if funding is available from sources other than those made available for treatment or other services.

(c) A county or a contractor for the provision of drug-Medi-Cal services shall notify the department, within 30 days of the receipt of the county allocation, of its intent to contract, as a component of the single state-county contract, for and provide certified services pursuant to Section 11758.42 for the proposed budget year. The notification shall include an accurate and complete budget proposal, the structure of which shall be mutually agreed to by county alcohol and drug program administrators and the department, in the format provided by the department, for specific services, for a specific time period, estimated units of service, estimated rate per unit consistent with law and regulations, and total estimated cost for appropriate services.

(d) (1) Within 30 days of receipt of the proposal described in subdivision (c), the department shall provide, to counties and contractors proposing to provide drug-Medi-Cal services in the proposed budget year, a proposed multiple-year contract, as a component of the single state-county contract, for these services, a current utilization control plan, and appropriate administrative procedures.

(2) A county contracting for alcohol and drug services shall receive a single state-county contract for the net negotiated amount and drug-Medi-Cal services.

(3) Contractors contracting for drug-Medi-Cal services shall receive a drug-Medi-Cal contract.

(e) (1) Upon receipt of a contract proposal pursuant to subdivision (c), a county and a contractor seeking to provide reimbursable drug-Medi-Cal services and the department may begin negotiations and the process for contract approval.

(2) If a county does not approve a contract by July 1 of the appropriate fiscal year, in accordance with subdivisions (b) to (d), inclusive, the county shall have 30 additional days in which to approve a contract. If the county has not approved the contract by the end of that 30-day period, the department shall contract directly for services within 30 days.

(3) Counties shall negotiate contracts only with providers certified to provide reimbursable drug-Medi-Cal services and that elect to participate in this program. Upon contract approval by the department, a county shall establish approved contracts with certified providers within 30 days following enactment of the annual Budget Act. A county may establish contract provisions to ensure interim funding pending the execution of final contracts, multiple-year contracts pending final annual approval by the department, and, to the extent allowable under the annual Budget Act, other procedures to ensure timely payment for services.

(f) (1) For counties and contractors providing drug-Medi-Cal services, pursuant to approved contracts, and that have accurate and complete claims, reimbursement for services from state General Fund moneys shall commence no later than 45 days following the enactment of the annual Budget Act for the appropriate state fiscal year.

(2) For counties and contractors providing drug-Medi-Cal services, pursuant to approved contracts, and that have accurate and complete claims, reimbursement for services from federal medicaid funds shall commence no later than 45 days following the enactment of the annual Budget Act for the appropriate state fiscal year.

(3) By July 1, 1997, the State Department of Health Services and the department shall develop methods to ensure timely payment of drug-Medi-Cal claims.

(4) The State Department of Health Services, in cooperation with the department, shall take steps necessary to streamline the billing system for reimbursable drug-Medi-Cal services, to assist the department in meeting the billing provisions set forth in this subdivision.

(g) The department shall submit a proposed interagency agreement to the State Department of Health Services by May 1 for the following fiscal year. Review and interim approval of all contractual and programmatic requirements, except final fiscal estimates, shall be completed by the State Department of Health Services by July 1. The interagency agreement shall not take effect until the annual Budget Act is enacted and fiscal estimates are approved by the State Department of Health Services. Final

approval shall be completed within 45 days of enactment of the Budget Act.

(h) (1) A county or a provider certified to provide reimbursable drug-Medi-Cal services, that is contracting with the department, shall estimate the cost of those services by April 1 of the fiscal year covered by the contract, and shall amend current contracts, as necessary, by the following July 1.

(2) A county or a provider, except for a provider to whom subdivision (i) applies, shall submit accurate and complete cost reports for the previous state fiscal year by November 1, following the end of the state fiscal year. The department may settle cost for drug-Medi-Cal services, based on the cost report as the final amendment to the approved single state-county contract.

(i) Certified narcotic treatment program providers, that are exclusively billing the state or the county for services under Section 11758.42, shall submit accurate and complete performance reports for the previous state fiscal year by November 1 following the end of that state fiscal year. A provider to which this subdivision applies shall estimate its budgets using the uniform state monthly reimbursement rate. The format and content of the performance reports shall be mutually agreed to by the department, the County Alcohol and Drug Program Administrators Association of California, and representatives of the narcotic treatment providers.

SEC. 64.- Section 13113 of the Health and Safety Code is amended to read:

13113. (a) Except as otherwise provided in this section, no person, firm, or corporation shall establish, maintain, or operate any hospital, children's home, children's nursery, or institution, home or institution for the care of aged or senile persons, sanitarium or institution for insane or mentally retarded persons, or nursing or convalescent home, wherein more than six guests or patients are housed or cared for on a 24-hour-per-day basis unless there is installed and maintained in an operable condition in every building, or portion thereof where patients or guests are housed, an automatic sprinkler system approved by the State Fire Marshal.

(b) This section does not apply to homes or institutions for the 24-hour-per-day care of ambulatory children if all of the following conditions are satisfied:

(1) The buildings, or portions thereof in which children are housed, are not more than two stories in height and are constructed and maintained in accordance with regulations adopted by the State Fire Marshal pursuant to Section 13143 and building standards published in the California Building Standards Code.

(2) The buildings, or portions thereof housing more than six children, shall have installed and maintained in an operable condition therein a fire alarm system of a type approved by the State

Fire Marshal. The system shall be activated by detectors responding to invisible products of combustion other than heat.

(3) The buildings or portions thereof do not house mentally ill or mentally retarded children.

(c) This section does not apply to any one-story building or structure of an institution or home for the care of the aged providing 24-hour-per-day care if the building or structure is used or intended to be used for the housing of no more than six ambulatory aged persons. However, the buildings or institutions shall have installed and maintained in an operable condition therein a fire alarm system of a type approved by the State Fire Marshal. The system shall be activated by detectors responding to products of combustion other than heat.

(d) This section does not apply to occupancies, or any alterations thereto, located in type I construction, as defined by the State Fire Marshal, under construction or in existence on March 4, 1972.

(e) "Under construction," as used in this section, means that actual work shall have been performed on the construction site and shall not be construed to mean that the hospital, home, nursery, institution, sanitarium, or any portion thereof, is in the planning stage.

SEC. 65. Section 19183 of the Health and Safety Code is amended to read:

19183. Manufacturers of earthquake sensitive gas shutoff devices or other devices required by an ordinance adopted pursuant to Section 19182 shall first obtain certification, pursuant to Article 7 (commencing with Section 19200), that the device meets the standards established pursuant to Section 19182.

SEC. 66. Section 19825 of the Health and Safety Code is amended to read:

19825. (a) Every city or county that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall, in addition to any other requirements, require the following declarations in substantially the following form upon the issuance of any building permit:

BUILDING PROJECT IDENTIFICATION

Applicant's Mailing Address

Address of Building

Owner's Name if known

Telephone No. _____

Contractor's Name _____

Contractor's Mailing Address _____

Lic. No. _____

Architect or Engineer _____

Architect's or Engineer's Address _____

Lic. No. _____

In addition the city or county may require that there be included, in the building project identification portion of a building permit, the following:

Assessor's Parcel Number* _____

Permit date _____

Permit number _____

Description of work _____

Building permit valuation _____

*To be entered by issuing agency.

LICENSED CONTRACTOR'S DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class _____ Lic. No. _____

Date _____ Contractor _____

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors License Law for the following reason (Sec. 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500).):

☐ I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who does the work himself or herself or through his or her own employees, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.).

☐ I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who contracts for the projects with a contractor(s) licensed pursuant to the Contractors License Law.).

☐ I am exempt under Sec. ____, B. & P.C. for this reason

Date _____ Owner _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

- _____ I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.
- _____ I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

(This section need not be completed if the permit is for one hundred dollars (\$100) or less).

_____ I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date: _____ Applicant: _____

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____

Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above-mentioned property for inspection purposes.

Signature of Applicant or Agent _____

Date _____

(b) The Contractors' State License Board shall semiannually compile and distribute to city, county, and city and county building departments a list of all contractors who did not secure payment of compensation in compliance with Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the Labor Code during any period for which workers were employed during the preceding six months.

SEC. 67. Section 19881 of the Health and Safety Code is amended to read:

19881. (a) No person shall sell, or offer for sale, any new or used unvented heater that is designed to be used inside any dwelling house or unit, with the exception of an electric heater, or decorative gas logs for use in a vented fireplace.

(b) Notwithstanding subdivision (a), natural-gas-fueled unvented decorative gas logs and fireplaces may be sold if the Department of Housing and Community Development and the State Department of Health Services approve of their use, and all of the following are satisfied:

(1) The Department of Housing and Community Development and the State Department of Health Services consider and develop recommended standards for their use. The cost of developing these standards may not exceed one hundred forty-five thousand dollars (\$145,000).

(2) Natural-gas-fueled unvented decorative gas logs and fireplaces meet the standards developed in accordance with paragraph (1) by the Department of Housing and Community Development and the State Department of Health Services.

(3) The California Building Standards Commission adopts the standards developed in accordance with paragraph (1) and pursuant to Section 18930.

(4) Natural-gas-fueled unvented decorative gas logs and fireplaces are listed by an agency approved by the Department of Housing and Community Development.

(c) Installation of natural-gas-fueled unvented decorative gas logs and fireplaces sold under standards developed pursuant to subdivision (b) shall be in accordance with the California Building Standards Code.

SEC. 68. Section 25143.2 of the Health and Safety Code is amended to read:

25143.2. (a) Recyclable materials are subject to this chapter and the regulations adopted by the department to implement this chapter that apply to hazardous wastes, unless the department issues a variance pursuant to Section 25143, or except as provided otherwise in subdivision (b), (c), or (d) or in the regulations adopted by the department pursuant to Sections 25150 and 25151.

(b) Except as otherwise provided in subdivisions (e), (f), and (g), recyclable material that is managed in accordance with Section 25143.9 and is or will be recycled by any of the following methods shall be excluded from classification as a waste:

(1) Used or reused as an ingredient in an industrial process to make a product if the material is not being reclaimed.

(2) Used or reused as a safe and effective substitute for commercial products if the material is not being reclaimed.

(3) Returned to the original process from which the material was generated, without first being reclaimed, if the material is returned as a substitute for raw material feedstock, and the process uses raw materials as principal feedstocks.

(c) Except as otherwise provided in subdivision (e), any recyclable material may be recycled at a facility that is not authorized by the department pursuant to the applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if either of the following requirements is met:

(1) The material is a petroleum refinery waste containing oil that is converted into petroleum coke at the same facility at which the waste was generated unless the resulting coke product would be identified as a hazardous waste under this chapter.

(2) The material meets all of the following conditions:

(A) The material is recycled and used at the same facility at which the material was generated.

(B) The material is recycled within the applicable generator accumulation time limits specified in Section 25123.3 and the regulations adopted by the department pursuant to paragraph (1) of subdivision (b) of Section 25123.3.

(C) The material is managed in accordance with all applicable requirements for generators of hazardous wastes under this chapter and regulations adopted by the department.

(d) Except as otherwise provided in subdivisions (e), (f), (g), and (h), recyclable material that meets the definition of a non-RCRA hazardous waste in Section 25117.9, is managed in accordance with Section 25143.9, and meets or will meet any of the following requirements is excluded from classification as a waste:

(1) The material can be shown to be recycled and used at the site where the material was generated.

(2) The material qualifies as one or more of the following:

(A) The material is a product that has been processed from a hazardous waste, or has been handled, at a facility authorized by the department pursuant to the facility permit requirements of Article 9 (commencing with Section 25200) to process or handle the material, if the product meets both of the following conditions:

(i) The product does not contain constituents, other than those for which the material is being recycled, that render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141.

(ii) The product is used, or distributed or sold for use, in a manner for which the product is commonly used.

(B) The material is a petroleum refinery waste containing oil that is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter.

(C) The material is oily waste, used oil, or spent nonhalogenated solvent that is managed by the owner or operator of a refinery that is processing primarily crude oil and is not subject to permit requirements for the recycling of used oil, of a public utility, or of a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent of the refinery or public utility, and meets all of the following requirements:

(i) The material is either burned in an industrial boiler, an industrial furnace, an incinerator, or a utility boiler that is in compliance with all applicable federal and state laws, or is recombined with normal process streams to produce a fuel or other refined petroleum product.

(ii) The material is managed at the site where it was generated; managed at another site owned or operated by the generator, a corporate subsidiary of the generator, a subsidiary of the same entity of which the generator is a subsidiary, or the corporate parent of the generator; or, if the material is generated in the course of oil or gas exploration or production, managed by an unrelated refinery receiving the waste through a common pipeline.

(iii) The material does not contain constituents, other than those for which the material is being recycled, that render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141, unless the material is an oil-bearing material or recovered oil that is managed in accordance with subdivisions (a) and (c) of Section 25144.

(D) The material is a fuel that is transferred to, and processed into, a fuel or other refined petroleum product at a petroleum refinery, as defined in paragraph (4) of subdivision (a) of Section 25144, and meets one of the following requirements:

(i) The fuel has been removed from a fuel tank and is contaminated with water or nonhazardous debris, of not more than 2 percent by weight, including, but not limited to, rust or sand.

(ii) The fuel has been unintentionally mixed with an unused petroleum product.

(3) The material is transported between locations operated by the same person who generated the material, if the material is recycled at the last location operated by that person and all of the conditions of clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (4) are met. If requested by the department or by any official authorized to enforce this section pursuant to subdivision (a) of Section 25180, a person handling material subject to this paragraph shall, within 15 days from the date of receipt of the request, supply documentation to show that the requirements of this paragraph have been satisfied.

(4) (A) The material is transferred between locations operated by the same person who generated the material, if the material is to be recycled at an authorized offsite hazardous waste facility and if all of the following conditions are met:

(i) The material is transferred by employees of that person in vehicles under the control of that person or by a registered hazardous waste hauler under contract to that person.

(ii) The material is not handled at any interim location.

(iii) The material is not held at any publicly accessible interim location for more than four hours unless required by other provisions of law.

(iv) The material is managed in compliance with this chapter and the regulations adopted pursuant to this chapter prior to the initial transportation of the material and after the receipt of the material at the last location operated by that person. Upon receipt of the material at the last location operated by that person, the material shall be deemed to have been generated at that location.

(v) All of the following information is maintained in an operating log at the last location operated by that person and kept for at least three years after receipt of the material at that location:

(I) The name and address of each generator location contributing material to each shipment received.

(II) The quantity and type of material contributed by each generator to each shipment of material.

(III) The destination and intended disposition of all material shipped offsite or received.

(IV) The date of each shipment received or sent offsite.

(vi) If requested by the department, or by any law enforcement official, a person handling material subject to this paragraph shall, within 15 days from the date of receipt of the request, supply documentation to show that the requirements of this paragraph have been satisfied.

(B) For purposes of paragraph (3) and subparagraph (A) of this paragraph, "person" also includes corporate subsidiary, corporate parent, or subsidiary of the same corporate parent.

(C) Persons that are a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent, and that manage recyclable materials under paragraph (3) or subparagraph (A) of this paragraph, are jointly and severally liable for any activities excluded from regulation pursuant to this section.

(5) The material is used or reused as an ingredient in an industrial process to make a product if the material is not being treated before introduction to that process except by one or more of the following procedures, and if any discharges to air from the following procedures do not contain constituents that are hazardous wastes pursuant to the regulations of the department and are in compliance with applicable air pollution control laws:

(A) Filtering.

(B) Screening.

(C) Sorting.

(D) Sieving.

(E) Grinding.

(F) Physical or gravity separation without the addition of external heat or any chemicals.

(G) pH adjustment.

(H) Viscosity adjustment.

(6) The material is used or reused as a safe and effective substitute for commercial products, if the material is not being treated except by one or more of the following procedures, and if any discharges to air from the following procedures do not contain constituents that are hazardous wastes pursuant to the regulations of the department and are in compliance with applicable air pollution control laws:

(A) Filtering.

(B) Screening.

(C) Sorting.

(D) Sieving.

(E) Grinding.

(F) Physical or gravity separation without the addition of external heat or any chemicals.

(G) pH adjustment.

(H) Viscosity adjustment.

(7) The material is a chlorofluorocarbon or hydrochlorofluorocarbon compound or a combination of chlorofluorocarbon or hydrochlorofluorocarbon compounds, is being reused or recycled, and is used in heat transfer equipment, including, but not limited to, mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems, used in fire extinguishing products, or contained within foam products.

(e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable materials are hazardous wastes and subject to full regulation under this chapter, even if the recycling involves use, reuse, or return to the original process as described in subdivision (b), and even if the recycling involves activities or materials described in subdivisions (c) and (d):

(1) Materials that are a RCRA hazardous waste, as defined in Section 25120.2, used in a manner constituting disposal, or used to produce products that are applied to the land, including, but not limited to, materials used to produce a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance.

(2) Materials that are a non-RCRA hazardous waste, as defined in Section 25117.9, and used in a manner constituting disposal or used to produce products that are applied to the land as a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(3) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, except materials exempted under paragraph

(1) of subdivision (c) or excluded under subparagraph (B), (C), or (D) of paragraph (2) of subdivision (d).

(4) Materials accumulated speculatively.

(5) Materials determined to be inherently wastelike pursuant to regulations adopted by the department.

(6) Used or spent etchants, stripping solutions, and plating solutions that are transported to an offsite facility operated by a person other than the generator and either of the following applies:

(A) The etchants or solutions are no longer fit for their originally purchased or manufactured purpose.

(B) If the etchants or solutions are reused, the generator and the user cannot document that they are used for their originally purchased or manufactured purpose without prior treatment.

(7) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the following applies:

(A) The used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d), paragraph (4) of subdivision (d), subdivision (e) of Section 25250.1, Section 25250.2, or Section 25250.3, and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

(B) The used oil is used or reused on the site where it was generated or is excluded under paragraph (3) of subdivision (d), is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations, and is not any of the following:

(i) Used in a manner constituting disposal or used to produce a product that is applied to land.

(ii) Burned for energy recovery or used to produce a fuel unless the used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(iii) Accumulated speculatively.

(iv) Determined to be inherently wastelike pursuant to regulations adopted by the department.

(f) (1) Any person who manages a recyclable material under a claim that the material qualifies for exclusion or exemption pursuant to this section shall provide, upon request, to the department, the Environmental Protection Agency, or any local agency or official authorized to bring an action as provided in Section 25180, all of the following information:

(A) The name, street and mailing address, and telephone number of the owner or operator of any facility that manages the material.

(B) Any other information related to the management by that person of the material requested by the department, the Environmental Protection Agency, or the authorized local agency or official.

(2) Any person claiming an exclusion or an exemption pursuant to this section shall maintain adequate records to demonstrate to the satisfaction of the requesting agency or official that there is a known market or disposition for the material, and that the requirements of any exemption or exclusion pursuant to this section are met.

(3) For purposes of determining that the conditions for exclusion from classification as a waste pursuant to this section are met, any person, facility, site, or vehicle engaged in the management of a material under a claim that the material is excluded from classification as a waste pursuant to this section shall be subject to Section 25185.

(g) For purposes of Chapter 6.8 (commencing with Section 25300), recyclable materials excluded from classification as a waste pursuant to this section are not excluded from the definition of hazardous substances in subdivision (g) of Section 25316.

(h) Used oil that fails to qualify for exclusion pursuant to subdivision (d) solely because the used oil is a RCRA hazardous waste may be managed pursuant to subdivision (d) if the used oil is also managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

SEC. 69. Section 25179.8 of the Health and Safety Code is amended to read:

25179.8. (a) Except as provided in subdivision (d), the department may grant a variance from the requirements of Sections 25179.5 and 25179.6 for a hazardous waste, consistent with Section 25143.

(b) The department may grant a variance from the requirements of Section 25179.6 for agricultural drainage waters that meet the criteria established by the department pursuant to Section 25141 if a person demonstrates, to the satisfaction of the department, that all of the following conditions apply to the waste:

(1) There are no technically and economically feasible treatment, reuse, or recycling alternatives available to render the agricultural drainage water nonhazardous.

(2) The applicant can demonstrate that the continued disposal of agricultural drainage waters does not pose an immediate or significant long-term risk to public health or the environment.

(3) The disposal of the agricultural drainage waters is in compliance with the requirements of Section 25179.3.

(c) A variance granted by the department pursuant to subdivision (b) shall remain in effect for a period not longer than three years and may be renewed for additional three-year periods.

(d) When granting a variance pursuant to this section, the department may specify, where appropriate, any treatment that shall be required prior to land disposal of the waste, and may impose

requirements that may be necessary to protect the public health and the environment.

(e) The department shall not grant a variance pursuant to subdivision (a) for hazardous waste that is restricted or prohibited by the Environmental Protection Agency pursuant to the federal act, unless either of the following applies:

(1) The waste has been granted a variance by the Administrator of the Environmental Protection Agency and the variance granted by the department does not permit less stringent management than that required pursuant to the federal variance.

(2) The Environmental Protection Agency has delegated the authority to grant variances to the department pursuant to the federal act.

SEC. 70. The heading of Article 11 (commencing with Section 25299.90) of Chapter 6.75 of Division 20 of the Health and Safety Code is amended to read:

Article 11. Commingled Plume Account

SEC. 71. Section 25299.92 of the Health and Safety Code is amended to read:

25299.92. A sum not to exceed ten million dollars (\$10,000,000) from Item 3940-001-0439 of Section 2.00 of the Budget Act of 1996 (Ch. 162, Stats. 1996) shall be available for expenditure for the 1996-97 fiscal year for the purposes of this article. In subsequent fiscal years, it is the intent of the Legislature that an appropriation be made in the annual Budget Act to carry out this article.

SEC. 72. Section 25330.4 of the Health and Safety Code is amended to read:

25330.4. (a) Notwithstanding any other provisions of law, the Controller shall establish a separate subaccount in the state account, for any funds received from a settlement agreement or the General Fund for a removal or remedial action to be performed at a specific site.

(b) Notwithstanding Section 13340 of the Government Code, funds deposited in a subaccount established pursuant to subdivision (a) for those removal or remedial actions are hereby continuously appropriated to the department for removal or remedial action at the specific site, and for administrative costs associated with the removal or remedial action at the specific site.

(c) Notwithstanding any other provision of law, money in a subaccount for removal or remedial actions shall not revert to the General Fund or be transferred to any other fund or account in the State Treasury, except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from investment of the funds specified in subdivision (a) pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the subaccount for removal or remedial action for that specific site.

(e) At the conclusion of all removal or remedial actions at the specific site, any unexpended funds in any subaccount established pursuant to this section shall be transferred to the subaccount for site operation and maintenance established pursuant to Section 25330.5, if necessary, for those activities at the site, or, if not needed for site operation and maintenance at the site, to the Hazardous Waste Control Account.

SEC. 73. Section 25532 of the Health and Safety Code is amended to read:

25532. Unless the context indicates otherwise, the following definitions govern the construction of this article:

(a) "Accidental release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(b) "Administering agency" means the local agency authorized, pursuant to Section 25502, to implement and enforce this article.

(c) "Covered process" means a process that has a regulated substance present in more than a threshold quantity.

(d) "Modified stationary source" means an addition or change to a stationary source that qualifies as a "major change," as defined in Subpart A of Part 68 of Title 40 of the Code of Federal Regulations. "Modified stationary source" does not include an increase in production up to the source's existing operational capacity or an increase in production level, up to the production levels authorized in a permit granted pursuant to Section 42300.

(e) "Process" means any activity involving a regulated substance, including any use, storage, manufacturing, handling, or onsite movement of the regulated substance or any combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located so that a regulated substance could be involved in a potential release, shall be considered a single process.

(f) "Qualified person" means a person who is qualified to attest, at a minimum, to the completeness of an RMP.

(g) "Regulated substance" means any substance that is either of the following:

(1) A regulated substance listed in Section 68.130 of Title 40 of the Code of Federal Regulations pursuant to paragraph (3) of subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(r)(3)).

(2) (A) An extremely hazardous substance listed in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations that is any of the following:

- (i) A gas at standard temperature and pressure.
- (ii) A liquid with a vapor pressure at standard temperature and pressure equal to or greater than ten millimeters mercury.
- (iii) A solid that is one of the following:
 - (I) In solution or in molten form.
 - (II) In powder form with a particle size less than 100 microns.
 - (III) Reactive with a National Fire Protection Association rating of 2, 3, or 4.

(iv) A substance that the office determines may pose a regulated substances accident risk pursuant to subclause (II) of clause (i) of subparagraph (B) or pursuant to Section 25543.3.

(B) (i) On or before June 30, 1997, the office shall, in consultation with the Office of Environmental Health Hazard Assessment, determine which of the extremely hazardous substances listed in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations do either of the following:

(I) Meet one or more of the criteria specified in clauses (i), (ii), or (iii) of subparagraph (A).

(II) May pose a regulated substances accident risk, in consideration of the factors specified in subdivision (g) of Section 25543.1, and, therefore, should remain on the list of regulated substances until completion of the review conducted pursuant to subdivision (a) of Section 25543.3.

(ii) The office shall adopt, by regulation, a list of the extremely hazardous substances identified pursuant to clause (i). Extremely hazardous substances placed on the list are regulated substances for the purposes of this article. Until the list is adopted, the administering agency shall determine which extremely hazardous substances should remain on the list of regulated substances pursuant to the standards specified in clause (i).

(h) "Regulated substances accident risk" means a potential for the accidental release of a regulated substance into the environment that could produce a significant likelihood that persons exposed may suffer acute health effects resulting in significant injury or death.

(i) "RMP" means the risk management plan required under Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations and by this article.

(j) "State threshold quantity" means the quantity of a regulated substance described in subparagraph (A) of paragraph (2) of subdivision (g), as adopted by the office pursuant to Section 25543.1 or 25543.3. Until the office adopts a state threshold quantity for a regulated substance, the state threshold quantity shall be the threshold planning quantity for the regulated substance specified in

Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations.

(k) "Stationary source" means any stationary source, as defined in Section 68.3 of Title 40 of the Code of Federal Regulations.

(l) "Threshold quantity" means the quantity of a regulated substance that is determined to be present at a stationary source in the manner specified in Section 68.115 of Title 40 of the Code of Federal Regulations and that is the lesser of either of the following:

(1) The threshold quantity for the regulated substance specified in Section 68.130 of Title 40 of the Code of Federal Regulations.

(2) The state threshold quantity.

SEC. 74. Section 25534 of the Health and Safety Code is amended to read:

25534. (a) For any stationary source with one or more covered processes, the administering agency shall make a preliminary determination as to whether there is a significant likelihood that the use of regulated substances by a stationary source may pose a regulated substances accident risk.

(b) (1) If the administering agency determines that there is a significant likelihood of a regulated substances accident risk pursuant to this subdivision, it shall require the stationary source to prepare and submit an RMP, or may reclassify the covered process from program 2 to program 3, as specified in Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations.

(2) If the administering agency determines that there is not a significant likelihood of a regulated substances accident risk pursuant to this subdivision, it may do either of the following:

(A) Require the preparation and submission of an RMP, but need not do so if it determines that the likelihood of a regulated substances accident risk is remote, unless otherwise required by federal law.

(B) Reclassify a covered process from program 3 to program 2 or from program 2 to program 1, as specified in Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations, unless the classification of the covered process is specified in those regulations.

(3) If the administering agency determines that an economic poison, as defined in Section 12753 of the Food and Agricultural Code, used on a farm or nursery may pose a regulated substances accident risk pursuant to this article, the administering agency shall first consult with the Department of Food and Agriculture or the county agricultural commissioner to evaluate whether the current RMP is adequate in relation to the regulated substances accident risk. This paragraph does not limit the authority of an administering agency to conduct its duties under this article, or prohibit the exercise of that authority.

(c) The requirements of this section apply to a stationary source that is not otherwise required to submit an RMP pursuant to Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations.

SBC. 75. Section 25538 of the Health and Safety Code is amended to read:

25538. (a) If a stationary source believes that any information required to be reported, submitted, or otherwise provided to the administering agency pursuant to this article involves the release of a trade secret, the stationary source shall provide the information to the administering agency and shall notify the administering agency in writing of that belief. Upon receipt of a claim of trade secret related to an RMP, the administering agency shall review the claim and shall segregate properly substantiated trade secret information from information that shall be made available to the public upon request in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code). As used in this section, "trade secret" has the same meaning as in subdivision (d) of Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(b) Except as otherwise specified in this section, the administering agency may not disclose any properly substantiated trade secret that is so designated by the owner or operator of a stationary source.

(c) The administering agency may disclose trade secrets received by the administering agency pursuant to this article to authorized officers or employees of other governmental agencies only in connection with the official duties of that officer or employee pursuant to any law for the protection of health and safety.

(d) Any officer or employee or former officer or employee of the administering agency or any other government agency who, because of that employment or official position, has possession of or access to information designated as a trade secret pursuant to this section shall not knowingly and willfully disclose the information in any manner to any person not authorized to receive the information pursuant to this section. Notwithstanding Section 25515, any person who violates this subdivision, and who knows that disclosure of this information to the general public is prohibited by the section, shall, upon conviction, be punished by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

(e) Any information prohibited from disclosure pursuant to any federal statute or regulation shall not be disclosed.

(f) This section does not authorize any stationary source to refuse to disclose to the administering agency any information required pursuant to this article.

(g) (1) Upon receipt of a request for the release of information to the public that includes information that the stationary source has notified the administering agency is a trade secret pursuant to subdivision (a), the administering agency shall notify the stationary source in writing of the request by certified mail, return receipt requested. The owner or operator of the stationary source shall have 30 days from receipt of the notification to provide the administering agency with any materials or information intended to supplement the information submitted pursuant to subdivision (a) and needed to substantiate the claim of trade secret. The administering agency shall review the claim of trade secret and shall determine whether the claim is properly substantiated.

(2) The administering agency shall inform the stationary source in writing, by certified mail, return receipt requested, of any determination by the administering agency that some, or all, of a claim of trade secret has not been substantiated. Not earlier than 30 days after the receipt by a stationary source of notice of the determination, the administering agency shall release the information to the public, unless, prior to the expiration of the 30-day period, the stationary source files an action in an appropriate court for a declaratory judgment that the information is subject to protection under subdivision (b) or for an injunction prohibiting disclosure of the information to the public, and promptly notifies the administering agency of that action.

SEC. 76. Section 25548.1 of the Health and Safety Code is amended to read:

25548.1. As used in this chapter, the following terms have the following meaning:

(a) "Actual benefit" means the amount, if any, realized by the lender upon the disposition of property acquired through foreclosure or its equivalent as a direct result of a removal or remedial action undertaken by another person, not to exceed the amount, if any, by which the disposition proceeds exceed the sum of the balance of all of the following:

(1) The loan or obligation or the amount of the lien, evidenced by the loan or obligation outstanding at foreclosure or its equivalent.

(2) The costs, including attorneys' fees, incurred by the lender in connection with the foreclosure or its equivalent, subsequent ownership, any removal or remedial action, and disposition of the property.

(b) "Borrower, debtor or obligor" means a person who is obligated to a lender under a loan or obligation, whether or not the lender maintains a security interest in that person's property.

(c) "Damages" includes compensatory damages, exemplary damages, punitive damages, and costs of every kind and nature, including, but not limited to, costs of a removal or remedial action.

(d) "Fiduciary" means a person who is acting in any of the following capacities:

(1) As trustee for a trust described in paragraph (1) or (2) of subdivision (a) of Section 82 of the Probate Code.

(2) As a fiduciary in any arrangement described in paragraphs (1) to (3), inclusive, or paragraphs (5) to (14), inclusive, of subdivision (b) of Section 82 of the Probate Code.

(3) A trustee appointed in proceedings under any state or federal bankruptcy law.

(4) An assignee or a trustee acting under an assignment made for the benefit of creditors.

(5) A court-appointed receiver.

(e) "Finance lease" means a transaction with respect to which both of the following apply:

(1) The lessor does not select or manufacture the goods or does not supply the goods, except in the case of a re-lease, whether it is created by a new transaction or substitution of the lessee.

(2) The lessor acquires the goods or right to possession and use of the goods in connection with the lease or a prior lease transaction.

(f) "Foreclosure or its equivalent" means the acquisition of property by a lender through any of the following:

(1) Judicial or nonjudicial foreclosure of the lender's security interest in the property or acceptance of a deed or other conveyance in satisfaction thereto.

(2) Acceptance of a deed in lieu of other conveyance in satisfaction of a loan or obligation previously contracted.

(3) Termination of a finance lease by consent or default.

(4) Any other formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations or promises from the borrower, by which the lender acquires, for subsequent disposition, actual possession of the property subject to a security interest.

(g) "Hazardous material" has the same meaning as defined in subdivision (d) of Section 25260.

(h) (1) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title to real or personal property acquired incident to foreclosure or its equivalent.

(2) "Evidence of an interest" includes, but is not limited to, all of the following:

(A) Mortgages.

(B) Deeds of trust.

(C) Liens.

(D) Surety bonds and guarantees of obligations.

(E) Title held pursuant to a finance lease in which the lessor does not select initially the leased property.

(F) Legal or equitable title obtained pursuant to foreclosure or its equivalent.

(G) Assignments, pledges, or other rights to, or other forms of, encumbrance against property that are held primarily to protect a security interest.

(3) A person is not required to hold title or a security interest to maintain indicia of ownership.

(i) "Lender" means a person to the extent of the capacity in which that person maintains indicia of ownership primarily to protect a security interest or makes, acquires, renews, modifies, or holds a loan or obligation from a borrower. "Lender" includes either of the following persons:

(1) Any person who acts as, or on behalf of, a lender in connection with any aspect of the solicitation, negotiation, consummation, disbursement, administration, servicing, collection, enforcement, or foreclosure or its equivalent of a loan or obligation or security interest in property.

(2) Any person who makes, secures, acquires, or holds a loan or obligation or security interest by assignment, sale, pledge, subrogation, succession, or operation of law, or becomes the receiver for the holder of a loan or obligation or security interest.

(j) "Loan or obligation" means a loan, revolving or nonrevolving line of credit, finance lease, sale-leaseback that provides for a purchase option in favor of the lessee, installment sale contract, sale on account, or other credit sale, letter of credit, forbearance or guaranty, collateral pledge, or other suretyship obligation, and any extension, renewal, or modification thereof. A loan or obligation may or may not involve a security interest in property.

(k) (1) Except as provided in paragraphs (3) and (4), "participate (or participation) in the management of the property" means actual participation in the management or operational affairs of the property by the lender while the borrower, under the loan or obligation, is in possession of the property, and the lender exercises decisionmaking control over the environmental compliance by the borrower, so that the lender assumes responsibility for the hazardous material handling or disposal practices of the borrower, or exercises control at a level comparable to that of a manager of the enterprise of the borrower, so that the lender assumes or manifests responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to either of the following:

(A) Environmental compliance.

(B) All, or substantially all, of the operational, as opposed to financial or administrative, aspects of the enterprise other than environmental compliance.

(2) For purposes of paragraph (1), the following terms have the following meaning:

(A) "Operational aspects of the enterprise" include functions such as that of facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(B) "Financial or administrative aspects" include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, or chief financial officer.

(3) Notwithstanding paragraph (1), "participation in the management of the property" does not include an act or omission by a prospective lender prior to making, acquiring, or holding a loan or obligation. "Participation in the management of the property" also does not include the actions taken by a prospective lender who undertakes or requires an environmental inspection of property prior to making, acquiring, or holding a loan or obligation. A lender or prospective lender does not "participate in the management of the property" if the lender or prospective lender requires the borrower to clean up the property or requires the borrower to comply or come into compliance with any applicable law or regulation. This chapter does not require a lender to conduct or require an inspection prior to foreclosure or its equivalent to qualify for the exemption provided by this chapter, and the liability of a lender shall not be based on or affected by whether the lender conducts or requires an inspection prior to foreclosure or its equivalent.

(4) Loan policing and work out activities, as specified in paragraphs (5) and (6), that are consistent with holding ownership indicia primarily to protect a security interest and consistent with a loan or obligation made, acquired, or held primarily for purposes other than investment purposes, do not constitute participation in the management of the property. The authority for the lender to take those actions may, but are not required to, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations, or promises from the borrower. Loan policing and work out activities include all activities up to foreclosure or its equivalent.

(5) A lender who engages in loan policing activities prior to foreclosure or its equivalent is exempt from liability pursuant to this chapter if the lender does not, by those actions, participate in the management of the property. Those actions include, but are not limited to, all of the following:

(A) Requiring the borrower to conduct a removal or remedial action during the term of the security interest or loan or obligation.

(B) Requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws during the term of the security interest or loan or obligation.

(C) Securing or exercising authority to monitor or inspect the property, including onsite inspections, or the business or financial

condition of the borrower during the term of the security interest or loan or obligation.

(D) Taking other actions to adequately police the loan, obligation, or security interest, such as requiring the borrower to comply with any warranties, covenants, conditions, representations, or promises in connection with the security interest or loan or obligation.

(6) (A) A lender who engages in work out activities prior to foreclosure or its equivalents is exempt from liability pursuant to this chapter if the lender does not, by those actions, participate in the management of the property.

(B) "Work out" means those actions by which a lender, at any time prior to foreclosure or its equivalent, seeks to prevent, cure, or mitigate a default by the borrower, or to preserve or prevent the diminution of the value of the property, security interest, or loan or obligation.

(C) Work out activities include, but are not limited to, all of the following:

(i) Restructuring or renegotiating the terms of the loan, obligation, or security interest.

(ii) Requiring payment of additional rent or interest.

(iii) Exercising rights pursuant to an assignment of accounts or other amounts owing to a lender.

(iv) Requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to a lender.

(v) Exercising forbearance.

(vi) Providing specific or general financial or other advice, suggestions, counseling, or guidance.

(vii) Exercising any right or remedy the lender is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(7) A lender does not participate in the management of the property by taking any response action under Section 107(d)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(d)(1)). However, the lender may be liable for damages, as defined by this chapter, that occur as a result of the gross negligence or willful misconduct of the lender in his or her performance of a response action under Section 107 (d)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(d)(1)).

(8) "Person" means any entity, including an individual, estate, trust, firm, business trust, joint stock company, corporation, partnership, joint venture, limited liability company, association, or government. "Person" includes any city, county, district, or the state or any department, subdivision, or agency thereof.

(9) "Primarily to protect a security interest" means that the indicia of ownership of a lender are held primarily for the purpose of securing payment or performance of an obligation. "Primarily to

protect a security interest" does not include indicia of ownership held primarily for investment purposes or indicia of ownership held primarily for purposes other than as protection for a security interest. A lender may have other, secondary reasons for maintaining indicia of ownership, but the primary reason that any indicia of ownership are held shall be as protection for a security interest.

(n) "Property" means any real or personal property where hazardous materials are or were generated, handled, managed, deposited, stored, disposed of, placed, released, or otherwise have come to be located. In the context of a loan or obligation, "property" includes any real or personal property in which the obligor has or had an ownership, leasehold, or possessory interest, whether or not it was the subject of a security interest for the loan or obligation.

(o) "Release" has the same meaning as defined in Section 25320.

(p) "Remedial action" has the same meaning as defined in subdivision (g) of Section 25260.

(q) "Removal" means the cleanup or removal of released hazardous materials from the environment or the taking of other actions that may be necessary to prevent, minimize, or mitigate damages that may otherwise result from a release or threatened release, as further defined in Section 101(23) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9601(23)).

(r) "Security interest" means an interest in a property created or established for the purpose of securing a loan or obligation. Security interests include, but are not limited to, mortgages, deeds of trust, liens, and title pursuant to a finance lease. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, and accounts receivable financing arrangements and consignments if the transaction creates or establishes an interest in a property for the purpose of securing a loan or other obligation.

SEC. 77. Section 27604 of the Health and Safety Code is amended and renumbered to read:

114015. (a) (1) No unpackaged food that has been served to any person or returned from any eating area shall be served again or used in the preparation of other food.

(2) No food prepared or stored in a private home shall be used, stored, served, offered for sale, sold, or given away in a food facility.

(3) Except as provided in paragraph (4), a private home shall not be used for the purpose of giving away, selling, or handling food at retail, as defined in Section 113875.

(4) Nonperishable, prepackaged food may be given away, sold, or handled from a private home. For purposes of this paragraph only:
(A) "nonperishable food" means a food that is not a potentially hazardous food, and does not show signs of spoiling, becoming rancid,

or developing objectionable odors during storage at ambient temperatures; and (B) no food that has exceeded the labeled shelf life date recommended by the manufacturer shall be deemed to be "nonperishable."

(b) Except as provided in subdivision (c) of Section 114080, every bakery product shall have a protective wrapping that bears a label that complies with the labeling requirements prescribed by the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875)). Bakery products sold directly to a restaurant, catering service, or retail bakery, or sold over the counter directly to the consumer by the manufacturer or bakery distributor shall be exempt from this subdivision. French style, hearth-baked, or hard-crust loaves and rolls shall be considered properly wrapped if contained in an open-end bag of sufficient size to enclose the loaves or rolls.

SEC. 78. Section 33459.1 of the Health and Safety Code is amended to read:

33459.1. (a) An agency may take any actions that the agency determines are necessary and that are consistent with other state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within a project area, subject to the conditions specified in subdivision (b). Unless an administering agency has been designated under Section 25262, the agency shall request cleanup guidelines from the department or the California regional water quality control board. The agency shall provide the department and local health and building departments, the California regional water quality control board, with notification of any cleanup activity pursuant to this section at least 30 days before the commencement of the activity. If an action taken by an agency to remedy or remove a release of a hazardous substance is not satisfactory to the department or the California regional water quality control board, the department or the California regional water quality control board may require the agency to take, or cause the taking of, additional action to remedy or remove the release, as provided by applicable law. If an administering agency for the site has been designated under Section 25262, any requirement for additional action may be imposed only as provided in Sections 25263 and 25265. If methane or landfill gas is present, the agency shall obtain written approval from the California Integrated Waste Management Board prior to taking that action.

(b) Except as provided in subdivision (c), an agency may take the actions specified in subdivision (a) only under one of the following conditions:

(1) There is no responsible party for the release identified by the agency.

(2) The party determined to be responsible for the release by the agency has been notified by the agency or has received adequate

notice from the department, a California regional water quality control board, the Environmental Protection Agency, or other governmental agency with relevant authority and has been given 60 days to respond and to propose a remedial action plan, and the responsible party has not agreed within an additional 60 days to implement a plan to remedy or remove the release that has been found by the agency to be consistent, to the maximum extent possible, with the priorities, guidelines, criteria, and regulations contained in the National Contingency Plan and published pursuant to Section 9605 of Title 42 of the United States Code for similar releases, situations, or events.

(3) The party determined to be responsible for the release has entered into the agreement specified in paragraph (2), but the legislative body of the agency subsequently determines that the plan is not being carried out in an appropriate and timely manner by the responsible party.

(c) Subdivision (b) does not apply to either of the following agencies:

(1) An agency taking actions to investigate or conduct feasibility studies concerning a release.

(2) An agency taking the actions specified in subdivision (a) if the agency determines that conditions require immediate action.

(d) An agency may designate a local agency in lieu of the department or the California regional water quality control board to oversee the remediation or removal of hazardous substances from a specific hazardous substance release site in accordance with all of the following conditions:

(1) The local agency may be so designated if it is designated as the administering agency under Section 25262. In that event, the local agency, as the administering agency, shall conduct the oversight of the remedial action in accordance with Chapter 6.65 (commencing with Section 25260) and all provisions of that chapter shall apply to the remedial action.

(2) The local agency may be so designated if the site is an underground storage tank site subject to Chapter 6.7 (commencing with Section 25280) of Division 20, the local agency has been certified as a certified unified program agency pursuant to Section 25404.1, the State Water Resources Control Board has entered into an agreement with the local agency for oversight of those sites pursuant to Section 25297.1, the local agency determines that the site is within the guidelines and protocols established in, and pursuant to, that agreement, and the local agency consents to the designation.

(3) A local agency may not consent to the designation by an agency unless the local agency determines that it has adequate staff resources and the requisite technical expertise and capabilities available to adequately supervise the remedial action.

(4) (A) Where a local agency has been designated pursuant to paragraph (2), the department or a California regional water quality control board may require that a local agency withdraw from the designation, after providing the agency with adequate notice, if both of the following conditions are met:

(i) The department or a California regional water quality control board determines that an agency's designation of a local agency was not consistent with paragraph (2), or makes one of the findings specified in subdivision (d) of Section 512.

(ii) The department or a California regional water quality control board determines that it has adequate staff resources and capabilities available to adequately supervise the remedial action, and assumes that responsibility.

(B) Nothing in this paragraph prevents a California regional water quality control board from taking any action pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(5) Where a local agency has been designated pursuant to paragraph (2), the local agency may, after providing the agency with adequate notice, withdraw from its designation after making one of the findings specified in subdivision (d) of Section 512.

(e) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 79. Section 33493.4 of the Health and Safety Code is amended to read:

33493.4. (a) Dwelling units, as defined, in the Alameda Naval Air Station and the Fleet Industrial Supply Center Project Area made available to a member of the Homeless Collaborative pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Part A of Title XXIX of Public Law 101-510; 10 U.S.C. Sec. 2687 note), and in particular Section (7) (C) through (G) thereof, and thereafter substantially rehabilitated, shall be deemed substantially rehabilitated units for purposes of determining the compliance of the Alameda Naval Air Station and the Fleet Industrial Supply Center redevelopment agency with the provisions of subdivision (b) of Section 33413.

(b) For the purposes of this section, "dwelling units" means permanent or transitional residential units, and does not mean student dormitory rooms or overnight emergency shelter beds.

(c) For the purposes of this section, "substantially rehabilitated" means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of land value.

SEC. 80. Section 34120 of the Health and Safety Code is amended to read:

34120. (a) The legislative body may, at the time of the adoption of an ordinance declaring that there is a need for a commission to function in the community or at any time thereafter, by adoption of

an ordinance, declare itself to be the commission, in which case all of the rights, powers, duties, privileges, and immunities vested by this part in a commission, except as otherwise provided in this part, shall be vested in the legislative body of the community.

However, in any community in San Bernardino County that is a charter city, the adoption of any order or resolution by the legislative body acting as the commission shall be governed by the same procedures as are set forth in the provisions of the charter, and the mayor shall be chairperson of the commission, having the same power and authority in the conduct of the commission and the meetings of the legislative body acting as the commission that the mayor has in the conduct of the affairs of the city.

(b) If the legislative body has declared itself to be the commission, the legislative body shall appoint two additional commissioners who are tenants of the housing authority if the housing authority has tenants. One tenant commissioner shall be over 62 years of age if the housing authority has tenants of that age. If the housing authority does not have tenants, the legislative body shall, by ordinance, provide for the appointment to the commission of two tenants of the housing authority, one of whom shall be over 62 years of age if the housing authority has tenants of that age, within one year after the housing authority first has tenants. The term of any tenant appointed pursuant to this subdivision shall be two years from the date of appointment. If a tenant commissioner ceases to be a tenant of the housing authority, he or she shall be disqualified from serving as a commissioner and another tenant of the housing authority shall be appointed to the remainder of the unexpired term. A tenant commissioner shall have all the powers, duties, privileges, and immunities of any other commissioner.

(c) As an alternative to the appointment of tenants of the housing authority as commissioners pursuant to subdivision (b), if a community development committee is created as provided in Section 34120.5, the governing body may make tenant appointments pursuant to subdivision (b) to the committee, rather than to the commission.

SEC. 81. Section 41751 of the Health and Safety Code is amended to read:

41751. (a) (1) As used in this article, "portable equipment" includes any portable internal combustion engine and equipment that is associated with, and driven by, any portable internal combustion engine.

(2) (A) As used in this article, and except as provided in subdivision (b), a "portable internal combustion engine" is any internal combustion engine that, by itself, or contained within or attached to a piece of equipment, is portable or transportable.

(B) As used in this paragraph, "portable or transportable" means designed to be, and capable of being, carried or moved from one

location to another. Indicia of portability or transportability include, but are not limited to, wheels, skids, carrying handles, or a dolly, trailer, or platform.

(b) Any engine otherwise included in this section is not a portable internal combustion engine if either of the following applies:

(1) The engine remains, or will remain, at a fixed location for more than 12 consecutive months. For purposes of this paragraph, a "fixed location" is any single site at a building, structure, facility, or installation.

(2) The engine is used to propel nonroad equipment or a motor vehicle of any kind, including, but not limited to, a heavy-duty vehicle.

(c) Portable equipment includes, but is not limited to, any of the following:

(1) Confined and unconfined abrasive blasting equipment.

(2) Portland concrete batch plants.

(3) Sand and gravel screening, rock crushing, unheated pavement crushing, and recycling operations equipment.

(4) Consistent with federal law, portable internal combustion engines used in conjunction with, but not limited to, the following types of operations or equipment:

(A) Well drilling, including service equipment and work over rigs.

(B) Power generation, excluding cogeneration.

(C) Pumps.

(D) Compressors.

(E) Pile drivers.

(F) Welding.

(G) Cranes.

(H) Wood chippers.

(5) Equipment necessary for the operation of portable equipment.

SBC. 82. Section 44081 of the Health and Safety Code is amended to read:

44081. (a) (1) The department, in cooperation with the state board, shall institute procedures for auditing the emissions of vehicles while actually being driven on the streets and highways of the state. The department may undertake those procedures itself or seek a qualified vendor of these services. The primary object of the procedures shall be the detection of gross polluters. The procedures shall consist of techniques and technologies determined by the department to be effective for that purpose, including, but not limited to, remote sensing. The procedures may include pullovers for roadside emissions testing and inspection. The department shall consider the recommendations of the review committee based on the outcome of the pilot demonstration program conducted pursuant to Section 44081.6.

(2) The department may additionally use other methods to identify gross polluting vehicles for out-of-cycle testing and repair.

(b) The department shall, by regulation, establish a program for the out-of-cycle testing and repair of vehicles found, through roadside auditing, to be emitting at levels that exceed specified standards. The program shall include all of the following elements:

(1) Emission standards, and test and inspection procedures and regulations, adopted in coordination with the state board, applicable to vehicles tested during roadside auditing. Emission standards for issuance of a notice of noncompliance to a gross polluter shall be designed to maximize the identification of vehicles with substantial excess emissions.

(2) Procedures for issuing notices of noncompliance to owners of gross polluters, either at the time of the roadside audit, or subsequently by certified mail, or by obtaining a certificate of mailing as evidence of service, using technologies for recording license plate numbers. The notice of noncompliance shall provide that, unless the vehicle is brought to a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (3) of subdivision (g) of Section 44014.5, for emissions testing within 30 days, the owner will be required to pay an administrative fee of five hundred dollars (\$500) to be collected by the Department of Motor Vehicles at the next annual registration renewal or the next change of ownership of the vehicle, whichever occurs first. Commencing on the 31st day after issuance of the notice of noncompliance, the fee shall accrue at the rate of five dollars (\$5) per day up to the maximum of five hundred dollars (\$500).

(3) Procedures for the testing of vehicles identified as gross polluters by a designated test-only facility, or a test-and-repair station, that is both licensed and certified pursuant to Sections 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (3) of subdivision (g) of Section 44014.5, to confirm that the vehicle exceeds the minimum emission standard for gross polluters set by the department.

(4) Procedures requiring owners of vehicles confirmed as gross polluters to have the vehicle repaired and resubmitted for testing, and to obtain a certificate of compliance from a designated test-only facility or removed from service as attested by a certificate of nonoperation from the Department of Motor Vehicles, within 30 days or be required to pay an administrative fee of not more than five hundred dollars (\$500), to be collected by the Department of Motor Vehicles at the next annual registration renewal or the next change of ownership, whichever occurs first. Commencing on the 31st day after issuance of the notice of noncompliance, the fee shall accrue at the rate of five dollars (\$5) per day up to the maximum of five

hundred dollars (\$500). The registration of a vehicle shall not be issued or renewed if that vehicle has been identified as a gross polluter and has not been issued a certificate of compliance. Except as provided in subdivision (b) of Section 9250.18 of the Vehicle Code, any revenues collected by the Department of Motor Vehicles pursuant to this subdivision and Section 9250.18 of the Vehicle Code shall be deposited in the Vehicle Inspection and Repair Fund. If the ownership of the vehicle is transferred, the administrative fee provided for in this subdivision shall be waived if the vehicle is brought into compliance.

(3) A procedure for notifying the Department of Motor Vehicles of notices of noncompliance issued, so that the Department of Motor Vehicles may provide effective collection of the administrative fee. The Department of Motor Vehicles shall cooperate with, and implement the requirements of, the department in that regard.

(6) The department may adopt any other regulations necessary for the effective implementation of this section, as determined by the department.

(c) Upon the request of the department, the Department of the California Highway Patrol shall provide assistance in conducting roadside auditing, to consist of (1) the stopping of vehicles and traffic management, and (2) the issuance of notices of noncompliance to gross polluters. The department shall reimburse the Department of the California Highway Patrol for its costs of providing those services. The Department of Transportation and affected local agencies shall provide necessary assistance and cooperation to the department in the operation of the program.

(d) There shall be no repair cost limit imposed pursuant to Section 44017 for any repairs that are required to be made under the roadside auditing program, except as provided in subdivision (d) of Section 44017.

SEC. 83. Section 44243.5 of the Health and Safety Code is amended to read:

44243.5. (a) The south coast district shall provide one million five hundred thousand dollars (\$1,500,000) annually on or before January 15 of each year to the Regional Transportation Agencies Coalition or its successor agency subject to the following conditions:

(1) The south coast district may, until January 1, 1999, utilize revenues from the fund established pursuant to subdivision (b) of Section 40448.7 for the purpose of this section. Notwithstanding paragraph (1) of subdivision (a) of Section 40448.7, the south coast district shall not be required to annually allocate one million dollars (\$1,000,000) to the Air Quality Assistance Fund to replace revenues allocated pursuant to this section.

(2) On and after January 1, 1999, the south coast district may utilize revenues received from civil and criminal penalties,

out-of-court settlements, or other sources for the purpose of this section.

(3) On and after January 1, 1999, the south coast district may utilize revenues generated pursuant to Section 44243 for the purposes of this section.

(b) The Regional Transportation Agencies Coalition shall fully allocate the revenues pursuant to subdivision (a) as expeditiously as possible to regional or county rideshare agencies for the purpose of providing marketing and client services to maximize voluntary ridesharing, including carpools, vanpools, transit, bicycling, telecommuting, and other alternative methods of commuting by employees at worksites in the South Coast Air Basin who commute during the peak period to worksites not regulated by south coast district Rule 2202. These funds are intended to supplement and not replace existing rideshare program funding.

SEC. 84. Section 129885 of the Health and Safety Code is amended to read:

129885. (a) A city or county, as applicable, shall have plan review and building inspection responsibilities for the construction or alteration of buildings described in paragraph (1) of subdivision (b) of Section 129725. The building standards for the construction or alteration of buildings specified in paragraph (1) of subdivision (b) of Section 129725 established or applied by a city or county, shall not be more restrictive or comprehensive than comparable building standards established, or otherwise applied, to clinics licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(b) Upon the initial submittal to a city or county by the governing authority or owner of a hospital for plan review and building inspection services for buildings described in paragraph (1) of subdivision (b) of Section 129725, the city or county shall reply in writing to the hospital as to whether or not the plan review by the city or county will include a certification that the clinic project submitted for plan review meets the clinic standards propounded by the office in the California Building Standards Code.

If the city or county indicates that its review will include this certification, it shall do all of the following:

(1) Apply the applicable clinic provisions of the latest edition of the California Building Standards Code.

(2) Certify in writing to the applicant within 30 days of completion of construction whether or not the standards have been met.

(c) If, upon initial submittal, the city or county indicates that its plan review will not include this certification, the governing authority or owner shall submit the plans to the Office of Statewide Health Planning and Development and the office shall review the plans for certification to determine whether or not the clinic project

meets the standards propounded by the office in the California Building Standards Code.

(d) When the office performs the certification review, the office shall charge a fee in an amount not to exceed its actual cost.

(e) Notwithstanding subdivision (a), the governing authority of a hospital may request the Office of Statewide Health Planning and Development to perform plan review and building inspection services for buildings described in paragraph (1) of subdivision (b) of Section 129725. If the office agrees to perform these services, the office shall charge an amount equal to its standard fee for the construction and alteration of hospital buildings. The construction or alteration of these buildings shall conform to the applicable provisions of the latest edition of the California Building Standards Code for purposes of the plan review and building inspection of the office pursuant to this subdivision.

(f) A building described in paragraph (1) of subdivision (b) of Section 129725 that is subject to the plan review and building inspection of the office pursuant to subdivision (e) may be designated by the governing authority or owner of the hospital as a "hospital building" as long as the building remains under the jurisdiction of the office. This hospital building shall be reviewed and inspected according to the standards and requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1 (commencing with Section 129675)).

(g) When a building is accepted for review by the office pursuant to subdivision (e), the governing authority of the hospital shall not request the city or county, as applicable, to conduct plan review and building inspection for any subsequent alteration of the same building, unless written notification is submitted to the office by the governing authority or owner of the hospital.

SEC. 85. Section 742.33 of the Insurance Code is amended to read:

742.33. Books, records, and documents pertaining to the business of the multiple employer welfare arrangement shall be maintained by the administrator for a period of five years. "Administrator," as used in this section, has the same meaning as that contained in Section 1002(16)(A) of Title 29 of the United States Code.

SEC. 86. Section 10123.13 of the Insurance Code is amended to read:

10123.13. Every insurer issuing group or individual policies of disability insurance that covers hospital, medical, or surgical expenses, including those telemedicine services covered by the insurer as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, shall reimburse claims or any portion of any claim, whether in state or out of state, for those expenses as soon as practical, but no later than 30 working days after receipt of the claim by the insurer unless the claim or portion thereof is contested by the insurer, in which case the claimant shall be notified, in writing, that

the claim is contested or denied, within 30 working days after receipt of the claim by the insurer. The notice that a claim is being contested shall identify the portion of the claim that is contested and the specific reasons for contesting the claim.

If an uncontested claim is not reimbursed by delivery to the claimant's address of record within 30 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the 30-working-day period.

For purposes of this section, a claim, or portion thereof, is reasonably contested when the insurer has not received a completed claim and all information necessary to determine payer liability for the claim, or has not been granted reasonable access to information concerning provider services. Information necessary to determine liability for the claims includes, but is not limited to, reports of investigations concerning fraud and misrepresentation, and necessary consents, releases, and assignments, a claim on appeal, or other information necessary for the insurer to determine the medical necessity for the health care services provided to the claimant.

The obligation of the insurer to comply with this section shall not be deemed to be waived when the insurer requires its contracting entities to pay claims for covered services.

SBC. 87. Section 10145.3 of the Insurance Code is amended to read:

10145.3. (a) Every disability insurer that covers hospital, medical, or surgical benefits shall provide an external, independent review process to examine the insurer's coverage decisions regarding experimental or investigational therapies for individual insureds who meet all of the following criteria:

(1) The insured has a terminal condition that, according to the insured's physician's current diagnosis, has a high probability of causing death within two years from the date of the request for an independent medical review.

(2) The insured's physician certifies that the insured has a condition, as defined in paragraph (1), for which standard therapies have not been effective in improving the condition of the insured, or for which standard therapies would not be medically appropriate for the insured, or for which there is no more beneficial standard therapy covered by the insurer than the therapy proposed pursuant to paragraph (3).

(3) Either (A) the insured's contracting physician has recommended a drug, device, procedure, or other therapy that the physician certifies in writing is likely to be more beneficial to the insured than any available standard therapies, or (B) the insured, or the insured's physician who is a licensed, board-certified or board-eligible physician qualified to practice in the area of practice appropriate to treat the insured's condition, has requested a therapy that, based on two documents from the medical and scientific

evidence, as defined in subdivision (d), is likely to be more beneficial for the insured than any available standard therapy. The physician certification pursuant to this subdivision shall include a statement of the evidence relied upon by the physician in certifying his or her recommendation. Nothing in this subdivision shall be construed to require the insurer to pay for the services of a noncontracting physician, provided pursuant to this subdivision, that are not otherwise covered pursuant to the contract.

(4) The insured has been denied coverage by the insurer for a drug, device, procedure, or other therapy recommended or requested pursuant to paragraph (3), unless coverage for the specific therapy has been excluded by the plan contract.

(5) This section does not apply to any Medi-Cal beneficiary enrolled with an insurer under the insurer's contract with the Medi-Cal program.

(6) The specific drug, device, procedure, or other therapy recommended pursuant to paragraph (3) would be a covered service except for the plan's determination that the therapy is experimental or under investigation.

(b) The insurer's external, independent review shall meet the following criteria:

(1) The insurer shall offer all insureds who meet the criteria in subdivision (a) the opportunity to have the requested therapy reviewed under the external, independent review process. The insurer shall notify eligible insureds in writing of the opportunity to request the external independent review within five business days of the decision to deny coverage.

(2) The insurer shall contract with one or more impartial, independent entities that are accredited pursuant to subdivision (c). The entity shall arrange for review of the coverage decision by selecting an independent panel of at least three physicians or other providers who are experts in the treatment of the insured's medical condition and knowledgeable about the recommended therapy. If the entity is an academic medical center accredited in accordance with subdivision (c), the independent panel may include experts affiliated with or employed by the entity. A panel of two experts may be arranged at the insurer's request, provided the insured consents in writing. The independent entity may arrange for a panel of one expert only if the independent entity certifies in writing that there is only one expert qualified and able to review the recommended therapy. Neither the insurer nor the insured shall choose or control the choice of the physician or other provider experts.

(3) Neither the expert, nor the independent entity, nor any officer, director, or management employee of the independent entity may have any material professional, familial, or financial affiliation, as defined in paragraph (4), with any of the following:

(A) The insurer.

(B) Any officer, director, or management employee of the insurer.

(C) The physician, the physician's medical group, or the independent practice association (IPA) proposing the therapy.

(D) The institution at which the therapy would be provided.

(E) The development or manufacture of the principal drug, device, procedure, or other therapy proposed for the insured whose treatment is under review.

(4) For purposes of this section, the following terms have the following meanings:

(A) "Material familial affiliation" means any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

(B) "Material professional affiliation" means any physician-patient relationship, any partnership or employment relationship, a shareholder or similar ownership interest in a professional corporation, or any independent contractor arrangement that constitutes a material financial affiliation with any expert or any officer or director of the independent entity. The term "material professional affiliation" does not include affiliations that are limited to staff privileges at a health facility.

(C) "Material financial affiliation" means any financial interest of more than 5 percent of total annual revenue or total annual income of an entity or individual to which this subdivision applies. "Material financial affiliation" does not include payment by the insurer to the independent entity for the services required by this section, nor does "material financial affiliation" include an expert's participation as a contracting provider for the insurer where the expert is affiliated with an academic medical center or a National Cancer Institute-designated clinical cancer research center.

(5) The insured shall not be required to pay for the external independent review. The costs of the review shall be borne by the insurer.

(6) The insurer shall provide to the independent entity arranging for the panel of experts a copy of the following documents within five business days of the insurer's receipt of a request by an insured or insured's physician for an external independent review.

(A) The medical records relevant to the patient's condition for which the proposed therapy has been recommended, provided the documents are within the insurer's possession. Any medical records provided to the insurer after the initial documents are provided to the independent entity shall be forwarded by the insurer to the independent entity within five business days. The confidentiality of the medical records shall be maintained pursuant to Section 56.10 of the Civil Code.

(B) A copy of any relevant documents used by the insurer in determining whether the proposed therapy should be covered, and any statement by the insurer explaining the reasons for the insurer's

decision not to provide coverage for the proposed therapy. The insurer shall provide, upon request, a copy of the documents required by this paragraph, except for the documents described in paragraphs (A) and (C), to the insured and the insured's physician.

(C) Any information submitted by the insured or the insured's physician to the insurer in support of the insured's request for coverage of the proposed drug, device, procedure, or other therapy.

(7) The experts on the panel shall render their analyses and recommendations within 30 days of the receipt of the insured's request for review. If the insured's physician determines that the proposed therapy would be significantly less effective if not promptly initiated, the analyses and recommendations of the experts on the panel shall be rendered within seven days of the request for expedited review. At the request of the expert, the deadline shall be extended by up to three days for a delay in providing the documents required by paragraph (6) of subdivision (b).

(8) Each expert's analysis and recommendation shall be in written form and state the reasons the requested therapy is or is not likely to be more beneficial for the insured than any available standard therapy, and the reasons that the expert recommends that the therapy should or should not be covered by the insurer, citing the insured's specific medical condition, the relevant documents provided pursuant to paragraph (6), and the relevant medical and scientific evidence, including, but not limited to, the medical and scientific evidence as defined in subdivision (d), to support the expert's recommendation.

(9) The independent entity shall provide the insurer and the insured's physician with the expert's analyses and recommendations, a description of the qualifications of each expert, and any other information that it chooses to provide to the insurer and the insured's physician, including, but not limited to, the names of the expert reviewers. The independent entity shall not be required to disclose the names of the expert reviewers to the insurer or to the insured's physician, except pursuant to a properly made request for discovery. If the independent entity chooses to disclose the names of the experts on the panel to the insurer, the independent entity must also disclose the names of the experts to the insured's physician. The insured's physician may provide these documents and information to the enrollee.

(10) If the majority of experts on the panel recommend providing the proposed therapy, pursuant to paragraph (8), the recommendation shall be binding on the insurer. If the recommendations of the experts on the panel are evenly divided as to whether the therapy should be provided, then the panel's decision shall be deemed to be in favor of coverage. If less than a majority of the experts on the panel recommend providing the therapy, the insurer is not required to provide the therapy. Coverage for the

services required under this section shall be provided subject to the terms and conditions generally applicable to other benefits under the contract.

(11) The insurer shall have written policies describing the external, independent review process. The insurer shall disclose the availability of the external, independent review process and how insureds may access the review process in the insurer's evidence of coverage and disclosure forms.

(c) The Commissioner of Corporations, in consultation with the Insurance Commissioner, shall, by January 1, 1998, contract with a private, nonprofit accrediting organization to accredit the independent review entities specified in subdivision (b). The accrediting organization shall have the power to grant and revoke accreditation, and shall develop, apply, and enforce accreditation standards, including those required in subdivision (e), that ensure the independence of the independent review entity, the confidentiality of the medical records, and the qualifications and independence of the health care professionals providing the analyses and recommendations requested of them. The accrediting organization shall demonstrate the ability to objectively evaluate the performance of independent entities and shall demonstrate that it has no conflict of interest, including any material professional, familial, or financial affiliation as defined in paragraph (4) of subdivision (b) with any independent entity or disability insurer, in accrediting entities for the purpose of reviewing medical treatments, treatment recommendations, and coverage decisions by disability insurers.

(d) For the purposes of paragraph (3) of subdivision (a), "medical and scientific evidence" means the following sources:

(1) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff.

(2) Peer-reviewed literature, biomedical compendia and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medica (EMBASE), Medline and MEDLARS data base Health Services Technology Assessment Research (HSTAR).

(3) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861(t)(2) of the Social Security Act.

(4) The following standard reference compendia: The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics and The United States Pharmacopoeia-Drug Information.

(5) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including the Federal Agency for Health Care Policy and Research, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Health Care Financing Administration, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services.

(6) Peer-reviewed abstracts accepted for presentation at major medical association meetings.

(e) In order to receive accreditation for the purposes of this section, an independent entity shall meet all of the following requirements:

(1) The independent entity must be an organization that has as its primary function the provision of expert reviews and related services and receives a majority of its revenues from these services, except that an academic medical center may qualify as an independent entity for purposes of this act without meeting either of these criteria. An independent entity may not be a subsidiary of, nor in any way owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers.

(2) The independent entity must submit to the accrediting organization and to the Department of Corporations the following information upon initial application for accreditation and annually thereafter upon any change to any of the following information:

(A) The names of all stockholders and owners of more than 5 percent of any stock or options, if a publicly held organization.

(B) The names of all holders of bonds or notes in excess of one hundred thousand dollars (\$100,000), if any.

(C) The names of all corporations and organizations that the independent entity controls or is affiliated with, and the nature and extent of any ownership or control, including the affiliated organization's type of business.

(D) The names and biographical sketches of all directors, officers, and executives of the independent entity, as well as a statement regarding any relationships the directors, officers, and executives may have with any health care service plan, disability insurer, managed care organization, provider group or board or committee.

(E) The percentage of revenue the independent entity receives from expert reviews.

(F) A description of the review process, including, but limited not to, the method of selecting expert reviewers and matching the expert reviewers to specific cases.

(G) A description of the system the independent entity uses to identify and recruit expert reviewers, the number of expert

reviewers credentialed, and the types of cases the experts are credentialed to review.

(H) Documentation regarding the medical institutions from which the independent entity has selected the experts during the previous 12 months, and the percentage of opinions obtained from each institution.

(I) A description of the areas of expertise available from expert reviewers retained by the independent entity.

(J) A description of how the independent entity ensures compliance with the conflict-of-interest provisions of this section.

(3) The independent entity must demonstrate that it has a quality assurance mechanism in place that does the following:

(A) Ensures that the experts retained are appropriately credentialed and privileged.

(B) Ensures that the reviews provided by the experts are timely, clear and credible, and that reviews are monitored for quality on an ongoing basis.

(C) Ensures that the method of selecting expert reviewers for individual cases achieves a fair and impartial panel of experts who are qualified to render recommendations regarding the clinical conditions and therapies in question.

(D) Ensures the confidentiality of medical records and the review materials, consistent with the requirements of this section.

(E) Ensures the independence of the experts retained to perform the reviews through conflict-of-interest policies and prohibitions and adequate screening for conflicts of interest, pursuant to paragraph (3) of subdivision (b).

(F) (1) The Department of Corporations shall receive the information filed by independent entities pursuant to paragraph (2) of subdivision (e) for the purpose of creating a file of public records. The Department of Corporations shall not be responsible for accrediting independent entities.

(2) The accrediting organization shall provide, upon the request of any interested person, a copy of all nonproprietary information filed with it by the independent entity under paragraph (2) of subdivision (e). The accrediting organization may charge a reasonable fee to the interested person for photocopying the requested information.

(g) The independent review process established by this section shall be required on and after July 1, 1998.

SEC. 88. Section 10164.2 of the Insurance Code is amended to read:

10164.2. (a) For a policy of individual life insurance that is surrendered by the policy owner, the insurer shall return to the owner all moneys due in relation to that policy as expeditiously as possible, but in no event more than 45 days from the date the surrender is effective as provided in subdivision (b). However, this

section does not supersede the provisions of subdivision (f) of Section 10160 empowering an insurer to defer payment of cash surrender value for up to six months, to the extent that deferral is necessary to assure the solvency of the insurer.

(b) Unless a later date permitted by the policy (but not later than 45 days after the request is received) is requested by the policy owner, a surrender of a life insurance policy is effective on the date the request is received, if the request is made to the insurer or servicing agent authorized by the insurer in writing to receive these requests on the insurer's behalf and contains the elements specified by the insurer in the contract. The insurer may require the request be in writing. The insurer may require some or all of the following elements, but shall not require more:

(1) A statement that makes it clear that the policy owner intends to surrender, in whole or in part, the contract in question.

(2) The policy number of the policy to be surrendered.

(3) The name of the insured on the policy to be surrendered.

(4) The signature of the owner of the policy and, if required by the policy or by a legally binding document of which the insurer has actual notice, the signature of a collateral assignee, irrevocable beneficiary, or other person having an interest in the policy through the legally binding document.

(5) Either the policy itself, or, in lieu of the policy, a statement that the policy has been lost or destroyed.

(c) When the policy owner requests of an insurer or servicing agent information about surrendering a policy, the insurer or servicing agent shall provide, as expeditiously as possible, a written notice setting forth either the requirements of this section or the insurer's requirements, if less.

(d) A policy subject to this section issued on or after January 1, 1997, shall either include language, which may be included by endorsement, or be accompanied by a notice setting forth the elements necessary to surrender the policy as required by this section or by the insurer, if less.

(e) Nothing in this section shall be construed to limit an existing statutory right to return a policy for surrender, nor shall it limit a contractual provision that provides a greater right or option to the policy owner.

(f) For a written request, for purposes of this section, "received" means the first day that the written notice is delivered to the address of the insurer or servicing agent authorized by the insurer in writing to receive these requests on the insurer's behalf. An insurer or servicing agent shall maintain a procedure for ensuring that requests for surrender are logged or stamped on the date received, and not on a later date due to the insurer's or servicing agent's internal routing or delivery procedures. If this procedure is not maintained, it shall be conclusively presumed that a request was received on the

delivery date shown on an express, certified, or registered mail receipt form of the United States Postal Service or by a commercial carrier, if delivered by commercial carrier, or the earlier of (1) two business days after the request was postmarked by the United States Postal Service or (2) one business day before the date stamped received by the insurer or servicing agent. For purposes of this subdivision, "business day" has the meaning set forth in subdivision (g) of Section 1215. Postmarks generated by postage meters not located at an office of the United States Postal Service are to be disregarded.

(g) This section does not alter a contractual provision governing calculation of cash or surrender or other values. The effective date established by subdivision (b) is intended to establish a date certain on which a policyholder may rely in determining when the 45-day period specified in subdivision (a) begins to run. Subdivision (b) is not intended to advance a date otherwise provided by contract that is triggered by a request to surrender. An insurer may request information in addition to that listed in subdivision (b). However, an insurer's request for additional information does not delay an effective date established by a policyholder's compliance with subdivision (b).

SEC. 89. Section 10509.963 of the Insurance Code is amended to read:

10509.963. If the commissioner has reason to believe that any insurer has violated this chapter, the commissioner may request and the insurer shall file both of the following:

- (a) An example of the annual report to the policy owner with notice of adverse change in nonguaranteed elements.
- (b) An example of an illustration.

SEC. 90. Section 10509.975 of the Insurance Code is amended to read:

10509.975. (a) A life insurer shall provide to all prospective insureds a buyer's guide prior to accepting the applicant's initial premium or premium deposit. However, if the policy for which application is made contains an unconditional refund provision of at least 10 days, the buyer's guide shall be delivered with the policy or prior to delivery of the policy.

(b) For the purposes of this chapter, a buyer's guide is a document that contains, and is limited to, the current buyer's guide recommended for use by the National Association of Insurance Commissioners.

SEC. 91. Section 1777.5 of the Labor Code is amended to read:

1777.5. Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he

or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered.

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

When the contractor to whom the contract is awarded by the state or any political subdivision, or any subcontractor under him or her, in performing any of the work under the contract or subcontract, employs workers in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject contractor or subcontractor, shall arrange for the dispatch of apprentices to the contractor or subcontractor in order to comply with this section. Every contractor and subcontractor shall submit contract award information to the applicable joint apprenticeship committee that includes an estimate of journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There is an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities. Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentices work for every five hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

The contractor or subcontractor, if he or she is covered by this section, upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by a journeyman or, in the land surveyor classification, one apprentice for each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio as set forth in this section. This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000) or 20 working days. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the hourly ratio required by this section.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. The joint apprenticeship committee has the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

- (a) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.
- (b) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(c) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(d) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When exemptions are granted to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

A contractor to whom the contract is awarded, or any subcontractor under him or her, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but, where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The contractor or subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Section 227.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

All decisions of the joint apprenticeship committee under this section are subject to Section 3081.

SBC. 92. Section 6500 of the Labor Code is amended to read:

6500. (a) For those employments or places of employment that by their nature involve a substantial risk of injury, the division shall require the issuance of a permit prior to the initiation of any practices, work, method, operation, or process of employment. The permit requirement of this section is limited to employment or places of employment that are any of the following:

(1) Construction of trenches or excavations that are five feet or deeper and into which a person is required to descend.

(2) The construction of any building, structure, falsework, or scaffolding more than three stories high or the equivalent height.

(3) The demolition of any building, structure, falsework, or scaffold more than three stories high or the equivalent height.

(4) The underground use of diesel engines in work in mines and tunnels.

This subdivision does not apply to motion picture, television, or theater stages or sets, including, but not limited to, scenery, props, backdrops, flats, greenbeds, and grids.

(b) On or after January 1, 2000, this subdivision shall apply to motion picture, television, or theater stages or sets, if there has occurred within any one prior calendar year in any combination at separate locations three serious injuries, fatalities, or serious violations related to the construction or demolition of sets more than 36 feet in height for the motion picture, television, and theatrical production industry.

An annual permit shall be required for employers who construct or dismantle motion picture, television, or theater stages or sets that are more than three stories or the equivalent height. A single permit shall be required under this subdivision for each employer, regardless of the number of locations where the stages or sets are located. An employer with a currently valid annual permit issued under this subdivision shall not be required to provide notice to the division prior to commencement of any work activity authorized by the permit. The division may adopt procedures to permit employers to renew by mail the permits issued under this subdivision. For purposes of this subdivision, "motion picture, television, or theater stages or sets" include, but are not limited to, scenery, props, backdrops, flats, greenbeds, and grids.

SEC. 93. Section 186.2 of the Penal Code is amended to read:

186.2. For purposes of this chapter, the following definitions apply:

(a) "Criminal profiteering activity" means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under any of the following sections:

(1) Arson, as defined in Section 451.

(2) Bribery, as defined in Sections 67, 67.5, and 68.

(3) Child pornography or exploitation, as defined in subdivision (b) of Section 311.2, or Section 311.3 or 311.4, which may be prosecuted as a felony.

(4) Felonious assault, as defined in Section 245.

(5) Embezzlement, as defined in Sections 424 and 503.

(6) Extortion, as defined in Section 518.

(7) Forgery, as defined in Section 470.

(8) Gambling, as defined in Sections 337a to 337f, inclusive, and Section 337i, except the activities of a person who participates solely as an individual bettor.

(9) Kidnapping, as defined in Section 207.

(10) Mayhem, as defined in Section 203.

(11) Murder, as defined in Section 187.

(12) Pimping and pandering, as defined in Section 266.

(13) Receiving stolen property, as defined in Section 496.

(14) Robbery, as defined in Section 211.

(15) Solicitation of crimes, as defined in Section 653f.

(16) Grand theft, as defined in Section 487.

(17) Trafficking in controlled substances, as defined in Sections 11351, 11352, and 11353 of the Health and Safety Code.

(18) Violation of the laws governing corporate securities, as defined in Section 25541 of the Corporations Code.

(19) Any of the offenses contained in Chapter 7.5 (commencing with Section 311) of Title 9, relating to obscene matter, or in Chapter 7.6 (commencing with Section 313) of Title 9, relating to harmful matter that may be prosecuted as a felony.

(20) Presentation of a false or fraudulent claim, as defined in Section 550.

(21) Money laundering, as defined in Section 186.10.

(22) Offenses relating to the counterfeit of a registered mark, as specified in Section 350.

(23) Offenses relating to the unauthorized access to computers, computer systems, and computer data, as specified in Section 502.

(24) Conspiracy to commit any of the crimes listed above, as defined in Section 182.

(25) Engaging in a pattern of criminal gang activity, as defined in subdivision (e) of Section 186.22.

(b) "Pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering, as defined by this act, that meet the following requirements:

(1) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics.

(2) Are not isolated events.

(3) Were committed as a criminal activity of organized crime.

Acts that would constitute a "pattern of criminal profiteering activity" may not be used by a prosecuting agency to seek the remedies provided by this chapter unless the underlying offense occurred after the effective date of this chapter and the prior act occurred within 10 years, excluding any period of imprisonment, of the commission of the underlying offense. A prior act may not be used by a prosecuting agency to seek remedies provided by this chapter if a prosecution for that act resulted in an acquittal.

(c) "Prosecuting agency" means the Attorney General or the district attorney of any county.

(d) "Organized crime" means crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods and services such as narcotics, prostitution, loan sharking, gambling, and pornography, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, or systematically encumbering the assets of a business for the purpose of defrauding creditors. "Organized crime" also means crime committed by a criminal street gang, as defined in subdivision (f) of Section 186.22.

(e) "Underlying offense" means an offense enumerated in subdivision (a) for which the defendant is being prosecuted.

SEC. 94. Section 269 of the Penal Code, as added by Chapter 878 of the Statutes of 1994, is repealed.

SEC. 95. Section 273.1 of the Penal Code is amended to read:

273.1. (a) Any treatment program to which a child abuser convicted of a violation of Section 273a or 273d is referred as a condition of probation shall meet the following criteria:

(1) Substantial expertise and experience in the treatment of victims of child abuse and the families in which abuse and violence have occurred.

(2) Staff providing direct service are therapists licensed to practice in this state or are under the direct supervision of a therapist licensed to practice in this state.

(3) Utilization of a treatment regimen designed to specifically address the offense, including methods of preventing and breaking the cycle of family violence, anger management, and parenting education that focuses, among other things, on means of identifying the developmental and emotional needs of the child.

(4) Utilization of group and individual therapy and counseling, with groups no larger than 12 persons.

(5) Capability of identifying substance abuse and either treating the abuse or referring the offender to a substance abuse program, to the extent that the court has not already done so.

(6) Entry into a written agreement with the defendant that includes an outline of the components of the program, the attendance requirements, a requirement to attend group session free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(7) The program may include, on the recommendation of the treatment counselor, family counseling. However, no child victim shall be compelled or required to participate in the program, including family counseling, and no program may condition a defendant's enrollment on participation by the child victim. The

treatment counselor shall privately advise the child victim that his or her participation is voluntary.

(b) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative child abuser's treatment counseling program.

(c) Upon request by the child abuser's treatment counseling program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(d) The child abuser's treatment counseling program shall provide the probation department and the court with periodic progress reports at least every three months that include attendance, fee payment history, and program compliance. The program shall submit a final evaluation that includes the program's evaluation of the defendant's progress, and recommendation for either successful or unsuccessful termination of the program.

(e) The defendant shall pay for the full costs of the treatment program, including any drug testing. However, the court may waive any portion or all of that financial responsibility upon a finding of an inability to pay. Upon the request of the defendant, the court shall hold a hearing to determine the defendant's ability to pay for the treatment program. At the hearing the court may consider all relevant information, but shall consider the impact of the costs of the treatment program on the defendant's ability to provide food, clothing, and shelter for the child injured by a violation of Section 273a or 273d. If the court finds that the defendant is unable to pay for any portion of the costs of the treatment program, its reasons for that finding shall be stated on the record. In the event of this finding, the program fees or a portion thereof shall be waived.

(f) All programs accepting referrals of child abusers pursuant to this section shall accept offenders for whom fees have been partially or fully waived. However, the court shall require each qualifying program to serve no more than its proportionate share of those offenders who have been granted fee waivers, and require all qualifying programs to share equally in the cost of serving those offenders with fee waivers.

SEC. 96. Section 290 of the Penal Code is amended to read:

290. (a) (1) Every person described in paragraph (2), for the rest of his or her life while residing in California, shall be required to register with the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities, within five working days of coming into any city, county, or city and county in which he or she temporarily resides or is domiciled

for that length of time. The person shall be required annually thereafter, within five working days of his or her birthday, to update his or her registration with the entities described in this paragraph, including verifying his or her name and address on a form as may be required by the Department of Justice.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of subdivision (b) of Section 207, kidnapping, as punishable pursuant to subdivision (d) of Section 208, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261 or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, 266j, 267, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (d) of Section 647, subdivision 1 or 2 of Section 314, any offense involving lewd and lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any federal or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A).

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) Any person who, after August 1, 1950, is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a), or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under

Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who, on or after January 1, 1995, is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraphs (3) and (4), shall be subject to registration under the procedures of this section.

(3) The following offenses apply for the purpose of this subdivision:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, subdivision (a) of Section 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208.

(C) Any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(4) Any person who is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(5) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(6) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by or registered in the name of the person.

(2) Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) If any person who is required to register pursuant to this section changes his or her name or residence address, the person shall inform, in writing within five working days, the law enforcement agency or agencies with whom he or she last registered of the new name or address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Notwithstanding paragraph (1), any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220, any violation of Section 264.1 or 289 under Section 220, any violation of Section 261, any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, any violation of Section 264.1, 286, 288, 288a, 288.5, or 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208, and who is required to register under this section who willfully violates this section is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(3) Any person required to register under this section based on a felony conviction who willfully violates this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a felony and shall be punished by imprisonment in the state prison for 16 months or two or three years.

A person punished pursuant to this paragraph or paragraph (2) shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

If the person has been sentenced to a term of imprisonment in the state prison, the penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision does not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision that, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(l) (1) Every person who, prior to January 1, 1985, is required to register under this section shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification is a defense against the penalties prescribed by subdivision (g) if the person did register within 30 days.

(2) Every person who, prior to January 1, 1997, is required to register under this section shall be notified whenever he or she next

reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification is a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (2) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(3) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(4) For purposes of this section, "likely to encounter" means both of the following:

(A) The agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(5) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(6) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(7) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a law enforcement agency may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense for which registration is required under paragraph (2) of subdivision (a) and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, 203, 206, 207, 236, provided that

the offense is a felony, subdivision (a) of Section 273a, 273d, or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, 314, 459, provided the offense is of the first degree, 597, 646.9, subdivision (d), (h), or (i) of Section 647, 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Law enforcement agency" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of

Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any state university, state college, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other law enforcement agency upon request, the following information regarding each identified high-risk sexual offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any law enforcement agency to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency, information concerning a specific person, including, but not limited to: the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(o) Agencies disseminating information to the public pursuant to subdivision (m) shall maintain records of the offender and the means and dates of dissemination for a minimum of five years.

(p) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this section.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(r) The registration and public notification provisions of this section apply to every person described in these sections without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

SEC. 97. Section 290.4 of the Penal Code is amended to read:

290.4. (a) (1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of subdivision (b) of Section 207; kidnapping, as punishable pursuant to subdivision (d) of Section 208; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that the offense is a felony; Section 266c, provided that the offense is a felony; Section 267; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony; subdivision (i) or (j) of Section 289; Section 647.6; or the statutory predecessor of any of these offenses. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraphs (6) and (7) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5.

(2) The information shall be categorized by community of residence and ZIP Code. The information shall include the names and known aliases of the person, photograph, a physical description, gender, race, date of birth, the criminal history, the address, including ZIP Code, in which the person resides, and any other information that the Department of Justice deems relevant, not including information that would identify the victim.

(3) The department shall operate a "900" telephone number that members of the public may call to inquire whether a named individual is listed among those described in this subdivision. The caller shall furnish his or her first name, middle initial, and last name. The department shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the information described in paragraph (2), except the department shall not disclose the street address or criminal history of a person listed, except to disclose the ZIP Code area in which the person resides and to describe the specific crimes for which the registrant was required to register. The department shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (A) an exact street address, including apartment number, social security number, California driver's license or identification number, or birth date along with additional information that may include any of the following: name, hair color, eye color, height, weight, distinctive markings, ethnicity; or (B) any combination of at least six of the above listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, a seventh identifying characteristic shall be

provided. Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded by the department.

(4) (A) On or before July 1, 1997, the department shall provide a CD-ROM or other electronic medium containing the information described in paragraph (2), except the person's street address and criminal history other than the specific crimes for which the person was required to register, for all persons described in paragraph (1) of subdivision (a), and shall distribute the CD-ROM or other electronic medium on a quarterly basis to the sheriff's department in each county, the municipal police department of each city with a population of more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (n) of Section 290. These law enforcement agencies may obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee. The Department of Justice, the sheriff's departments, and the municipal police department of each city with a population of more than 200,000 shall make, and the other law enforcement agencies may make, the CD-ROM or other electronic medium available for viewing by the public in accordance with the following. The agency may require that a person applying to view the CD-ROM or other electronic medium express an articulable purpose in order to have access thereto. The applicant shall provide identification in the form of a California driver's license or California identification card showing the applicant to be at least 18 years of age, shall sign a register, which the law enforcement agency is required to maintain, of persons applying to view the CD-ROM or other electronic medium, and shall sign a statement, on a form provided by the Department of Justice, stating that the applicant is not a registered sex offender, that he or she understands that the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders, and that he or she understands it is unlawful to use information obtained from the CD-ROM or other electronic medium to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the law enforcement agency's office.

(B) The records of persons requesting to view the CD-ROM or other electronic medium are confidential, except that a copy of the applications requesting to view the CD-ROM or other electronic medium may be disclosed to law enforcement agencies for law enforcement purposes.

(C) Any information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the CD-ROM or other electronic medium.

(5) (A) The income from the operation of the "900" number shall be deposited in the Sexual Predator Public Information Account, which is hereby established within the Department of Justice for the purpose of the implementation of this section by the Department of Justice, including all actual and reasonable costs related to establishing and maintaining the information described in subdivision (a) and the CD-ROM or other electronic medium described in this subdivision.

(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the "900" telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of the act adding this section, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

(C) When the "900" number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide the following information:

- (i) Notice that the caller's telephone number will be recorded.
- (ii) The charges for use of the "900" number.
- (iii) Notice that the caller is required to identify himself or herself to the operator.
- (iv) Notice that the caller is required to be 18 years of age or older.
- (v) A warning that it is illegal to use information obtained through the "900" number to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.
- (vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, address, or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.
- (vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.
- (viii) A statement that the caller should have a reasonable suspicion that a person is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars (\$600,000) per year from any moneys appropriated by the Legislature from the account.

(b) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be

subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(c) The record of the compilation of offender information on each CD-ROM or other electronic medium distributed pursuant to this section shall be used only for law enforcement purposes and the public safety purposes specified in this section and Section 290. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section, Section 290, or any other statute expressly authorizing that disclosure.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed six months or by a fine not exceeding one thousand dollars (\$1,000), or by both. This subdivision does not apply to a law enforcement officer who makes a copy as part of his or her official duties in the course of a criminal investigation or court case, or as otherwise authorized by subdivision (n) of Section 290.

Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(d) Unauthorized removal or destruction of the CD-ROM or other electronic medium from the offices of any law enforcement agency is a misdemeanor, punishable by imprisonment in a county jail not to exceed one year or by a fine not exceeding one thousand dollars (\$1,000), or both.

(e) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any of the following information disclosed pursuant to this section is prohibited:

- (A) Health insurance.
- (B) Insurance.
- (C) Loans.
- (D) Credit.
- (E) Employment.
- (F) Education, scholarships, or fellowships.
- (G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) of subdivision (e) or in violation of paragraph (2) of subdivision (e) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the "900" number in violation of paragraph (2) of subdivision (e), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies are independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(f) This section shall not be deemed to authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

(g) Community notification shall be governed by subdivisions (m) and (n) of Section 290.

(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the "900" telephone number required by paragraph (3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

(1) Number of calls received.

(2) Amount of income earned per year through operation of the "900" telephone number.

(3) A detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section.

(4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(5) Number of persons listed pursuant to subdivision (a).

(6) A summary of the success of the "900" telephone number program based upon selected factors.

(i) The "900" telephone number program authorized by this section shall terminate operation on January 1, 1998.

(j) Law enforcement agencies, employees of law enforcement agencies, and state officials are immune from liability for good faith conduct under this section.

(k) On or before July 1, 2000, the Department of Justice shall make a report to the Legislature concerning the changes to the operation of the "900" telephone number program made by the amendments to this section by Chapter 908 of the Statutes of 1996. The report shall include all of the following:

(1) Number of calls received by county.

(2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(3) Number of persons listed pursuant to subdivision (a).

(4) Statistical information concerning prosecutions of persons for misuse of the "900" telephone number program, including the outcomes of those prosecutions.

(5) A summary of the success of the "900" telephone number based upon selected factors.

(l) The registration and public notification provisions of this section apply to every person described in these sections without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

(m) This section shall become operative on July 1, 1995, and shall become inoperative on January 1, 1999, and as of that date is repealed unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 98. Section 311 of the Penal Code is amended to read:

311. As used in this chapter, the following definitions apply:

(a) "Obscene matter" means matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, if circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and may justify the

conclusion that the matter lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the matter taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of those matters, the fact that the defendant knew that the matter depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor that may be considered in making that determination.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material, or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction, or any other article, equipment, machine, or material. "Matter" also means live or recorded telephone messages if transmitted, disseminated, or distributed as part of a commercial transaction.

(c) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(d) "Distribute" means transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter or live conduct.

(f) "Exhibit" means show.

(g) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest and is conduct that, taken as a whole, depicts or describes sexual conduct in a patently offensive way and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the conduct or the circumstances of its production, presentation, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the conduct shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, if circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the conduct and may justify the conclusion that the conduct lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the live conduct taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of those matters, the fact that the defendant knew that the live conduct depicts persons under the age

of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor that may be considered in making that determination.

(h) The Legislature expresses its approval of the holding of *People v. Cantrell*, 7 Cal. App. 4th 523, that, for the purposes of this chapter, matter that "depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct" is limited to visual works that depict that conduct.

SEC. 99. Section 312.6 of the Penal Code, as added by Chapter 1079 of the Statutes of 1996, is repealed.

SEC. 100. Section 312.7 of the Penal Code, as added by Chapter 1079 of the Statutes of 1996, is repealed.

SEC. 101. Section 350 of the Penal Code is amended to read:

350. (a) Any person who, without the consent of the registrant, willfully manufactures, intentionally sells, or knowingly possesses for sale at the point of sale any counterfeit of a mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office, shall upon conviction, be punishable as follows:

(1) Where the offense involves less than 1,000 of the articles described in this subdivision, and if the person is an individual, he or she shall be punished by a fine of not more than five thousand dollars (\$5,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment; or, if the person is a corporation, by a fine of not more than one hundred thousand dollars (\$100,000).

(2) Where the offense involves 1,000 or more of the articles described in this subdivision, and if the person is an individual, he or she shall be punished by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months, or two or three years, by a fine not to exceed two hundred fifty thousand dollars (\$250,000), or by both that imprisonment and fine; or, if the person is a corporation, by a fine not to exceed five hundred thousand dollars (\$500,000).

(b) Any person who has been convicted of a violation of either paragraph (1) or (2) of subdivision (a) shall, upon a subsequent conviction of paragraph (1) of subdivision (a), if the person is an individual, be punished by a fine of not more than fifty thousand dollars (\$50,000), by imprisonment in a county jail for not more than one year, or in the state prison for 16 months, or two or three years, or by both that fine and imprisonment; or, if the person is a corporation, by a fine of not more than two hundred thousand dollars (\$200,000).

(c) Any person who has been convicted of a violation of subdivision (a) and who, by virtue of the conduct that was the basis of the conviction, has directly and foreseeably caused death or great bodily injury to another through reliance on the counterfeited item

for its intended purpose shall, if the person is an individual, be punished by a fine of not more than fifty thousand dollars (\$50,000), by imprisonment in the state prison for two, three, or four years, or by both that fine and imprisonment; or, if that person is a corporation, by a fine of not more than two hundred thousand dollars (\$200,000).

(d) Any person who knowingly possesses for sale, at a location other than the point of sale, any article described in subdivision (a) is guilty of a public offense.

(1) A violation of this subdivision involving less than 100 of these articles shall be punishable by imprisonment in a county jail for not more than six months, by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine. Any person who previously has been convicted of a violation of any paragraph of this subdivision shall, upon a new conviction of violating this subdivision arising from conduct described in this paragraph, be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed ten thousand dollars (\$10,000), or by both that imprisonment and fine. Any person who has been convicted of a violation of any paragraph of this subdivision on two or more previous occasions shall, upon a new conviction of violating this paragraph, be punished by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months, or two or three years, by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both that imprisonment and fine.

(2) A violation of this subdivision involving 100 or more of these articles, but less than 1,000, shall be punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars (\$10,000), or by both that imprisonment and fine. Any person who previously has been convicted of a violation of any paragraph of this subdivision on one or more occasions shall, upon a new conviction of violating this subdivision arising from conduct described in this paragraph, be punished by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months, or two or three years, by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both that imprisonment and fine.

(3) A violation of this subdivision involving 1,000 or more of these articles shall be punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months, or two or three years, by a fine not to exceed one hundred thousand dollars (\$100,000), or by both that imprisonment and fine.

(e) In any action brought under this section resulting in a conviction or a plea of nolo contendere, the court shall order the forfeiture and destruction of all of those marks and of all goods, articles, or other matter bearing the marks, and the forfeiture and destruction or other disposition of all means of making the marks, and any and all electrical, mechanical, or other devices for manufacturing, reproducing, transporting, or assembling these

marks, that were used in connection with, or were part of, any violation of this section. However, no vehicle shall be forfeited under this section that may be lawfully driven on the highway with a class 3 or 4 license, as prescribed in Section 12804 of the Vehicle Code, and that is any of the following:

(1) A community property asset of a person other than the defendant.

(2) The sole class 3 or 4 vehicle available to the immediate family of that person or of the defendant.

(3) Reasonably necessary to be retained by the defendant for the purpose of lawfully earning a living, or for any other reasonable and lawful purpose.

(f) As used in this section, the following definitions shall apply:

(1) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the number of "articles" shall be equivalent to the number of completed computer software packages that could have been made from those components.

(2) "At the point of sale" includes the entire building, structure, container, or vehicle in which the sale or attempted sale of an article has occurred.

(3) "Counterfeit mark" means a spurious mark that is identical with, or substantially indistinguishable from, a registered mark and is used on or in connection with the same type of goods or services for which the genuine mark is registered.

(4) "Knowingly possess" means that the person possessing an article actually knew that the article was not genuine.

(5) "Sale" includes resale.

(6) "Value" has the following meanings:

(A) When counterfeit items of computer software are manufactured or possessed for sale, the "value" of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(B) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the "value" of those components of computer software packages shall be equivalent to the retail price or fair market price of the number of completed computer software packages that could have been made from those components.

(g) This section shall not be enforced against any party who has adopted and lawfully used the same or confusingly similar mark in the rendition of like services or the manufacture or sale of like goods in this state from a date prior to the effective date of registration of the service mark or trademark pursuant to Chapter 2 (commencing

with Section 14200) of Division 6 of the Business and Professions Code.

(h) An owner, officer, employee, or agent who provides, rents, leases, licenses, or sells real property upon which a violation of subdivision (a) or (d) occurs shall not be subject to a criminal penalty pursuant to this section, unless he or she sells, or possesses for sale, articles bearing a counterfeit mark in violation of this section. This subdivision shall not be construed to abrogate or limit any civil rights or remedies for a trademark violation.

SEC. 102. Section 667.61 of the Penal Code, as added by Chapter 447 of the Statutes of 1994, is repealed.

SEC. 103. Section 831.5 of the Penal Code is amended to read:

831.5. (a) As used in this section, a custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of San Diego County, Fresno County, Kern County, Stanislaus County, Riverside County, or a county having a population of 425,000 or less who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein. Custodial officers of a county shall be employees of, and under the authority of, the sheriff, except in counties in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it. A custodial officer includes a person designated as a correctional officer, jailer, or other similar title. The duties of a custodial officer may include the serving of warrants, court orders, writs, and subpoenas in the detention facility or under circumstances arising directly out of maintaining custody of prisoners and related tasks.

(b) A custodial officer has no right to carry or possess firearms in the performance of his or her prescribed duties, except, under the direction of the sheriff or chief of police, while engaged in transporting prisoners; guarding hospitalized prisoners; or suppressing jail riots, lynchings, escapes, or rescues in or about a detention facility falling under the care and custody of the sheriff or chief of police.

(c) Each person described in this section as a custodial officer shall, within 90 days following the date of the initial assignment to that position, satisfactorily complete the training course specified in Section 832. In addition, each person designated as a custodial officer shall, within one year following the date of the initial assignment as a custodial officer, have satisfactorily met the minimum selection and training standards prescribed by the Board of Corrections pursuant to Section 6035. Persons designated as custodial officers, before the expiration of the 90-day and one-year periods described in this subdivision, who have not yet completed the required training, shall

not carry or possess firearms in the performance of their prescribed duties, but may perform the duties of a custodial officer only while under the direct supervision of a peace officer, as described in Section 830.1, who has completed the training prescribed by the Commission on Peace Officer Standards and Training, or a custodial officer who has completed the training required in this section.

(d) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers.

(e) This section shall not be construed to confer any authority upon any custodial officer except while on duty.

(f) A custodial officer may use reasonable force in establishing and maintaining custody of persons delivered to him or her by a law enforcement officer; may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant; may make warrantless arrests pursuant to Section 836.5 only during the duration of his or her job; may release without further criminal process persons arrested for intoxication; and may release misdemeanants on citation to appear in lieu of or after booking.

SEC. 104. Section 1295 of the Penal Code is amended to read:

1295. (a) The defendant, or any other person, at any time after an order admitting defendant to bail or after the arrest and booking of a defendant for having committed a misdemeanor, instead of giving bail may deposit, with the clerk of the court in which the defendant is held to answer or notified to appear for arraignment, the sum mentioned in the order or, if no order, in the schedule of bail previously fixed by the judges of the court, and, upon delivering to the officer in whose custody defendant is a certificate of the deposit, the defendant must be discharged from custody.

(b) Where more than one deposit is made with respect to any charge in any accusatory pleading based upon the acts supporting the original charge as a result of which an earlier deposit was made, the defendant shall receive credit in the amount of any earlier deposit.

(c) The clerk of the court shall not accept a general assistance check for this deposit or any part thereof.

SEC. 105. Section 1529 of the Penal Code is amended to read:

1529. The warrant shall be in substantially the following form:

County of _____.

The people of the State of California to any sheriff, marshal, or police officer in the County of _____:

Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, according to Section 1524, or, if the affidavit be not positive, that there is probable cause for believing that _____ stating the ground of the application in the same

manner), you are therefore commanded, in the daytime (or at any time of the day or night, as the case may be, according to Section 1533), to make search on the person of C.D. (or in the house situated _____ describing it, or any other place to be searched, with reasonable particularity, as the case may be) for the following property, thing, things, or person: (describing the property, thing, things, or person with reasonable particularity); and, in the case of a thing or things or personal property, if you find the same or any part thereof, to bring the thing or things or personal property forthwith before me (or this court) at (stating the place).

Given under my hand, and dated this _____ day of _____, A.D. (year).

E. F., Judge of the (applicable) Court.

SEC. 106. Section 4415 of the Penal Code is amended to read:

4415. Moneys in the fund shall be available for expenditure in accordance with this title by the Board of Corrections. Prior to the disbursement of any money in the fund, the board and the appropriate subcommittees of the Senate Committee on Criminal Procedure and of the Assembly Committee on Public Safety shall reexamine the factors specified in subdivisions (a) and (b) to determine whether they are still suitable and applicable to the distribution of the proceeds of the bonds authorized by this title. Moneys in the fund shall be available for expenditure for the following purposes:

(a) For the construction, reconstruction, remodeling, and replacement of county jail facilities, and the performance of deferred maintenance activities on the facilities pursuant to rules and regulations adopted by the Board of Corrections, in accordance with Section 6029.1. No expenditure shall be made unless county matching funds of 25 percent are provided.

(b) In performing the duties set forth in subdivision (a), the Board of Corrections shall consider all of the following:

(1) The extent to which the county requesting aid has exhausted all other available means of raising the requested funds for the capital improvements and the extent to which the funds from the County Jail Capital Expenditure Fund will be utilized to attract other sources of capital financing for county jail facilities.

(2) The extent to which the capital improvements are necessary to the life or safety of the persons confined or employed in the facility or the health and sanitary conditions of the facility.

(3) The extent to which the county has utilized reasonable alternatives to pre-conviction and post-conviction incarceration, including, but not limited to, programs to facilitate release upon one's own recognizance where appropriate to individuals pending trial, sentencing alternatives to custody, and civil commitment or

diversion programs consistent with public safety for those with drug- or alcohol-related problems or mental or developmental disabilities.

SEC. 107. Section 7500 of the Penal Code is amended to read:

7500. The Legislature finds and declares all of the following:

(a) The public peace, health, and safety is endangered by the spread of the human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) within state and local correctional institutions.

(b) The spread of AIDS within prison and jail populations presents a grave danger to inmates within those populations, law enforcement personnel, and other persons in contact with a prisoner infected with the AIDS virus, both during and after the prisoner's confinement. Law enforcement personnel and prisoners are particularly vulnerable to this danger, due to the high number of assaults and other violent acts that occur within correctional institutions.

(c) AIDS has the frightening potential of spreading more rapidly within the closed society of correctional institutions than outside these institutions. This major public health problem is compounded by the further potential of rapid spread of communicable disease outside correctional institutions, through contacts of an infected prisoner who is not treated and monitored upon his or her release.

(d) New diseases of epidemic proportions such as AIDS may suddenly and tragically infect large numbers of people. This title primarily addresses a current problem of this nature, the spread of AIDS among those in correctional institutions and among the people of California.

(e) HIV and AIDS pose a major threat to the public health and safety of those governmental employees and others whose responsibilities bring them into most direct contact with persons afflicted with those illnesses, and the protection of the health and safety of these personnel is of equal importance to the people of the State of California as the protection of the health of those afflicted with the diseases who are held in custodial situations.

(f) Testing described in this title of individuals housed within state and local correctional facilities for evidence of infection by HIV or AIDS would help to provide a level of information necessary for effective disease control within these institutions and would help to preserve the health of public employees, inmates, and persons in custody, as well as that of the public at large. This testing is not intended to be, and shall not be construed as, a prototypical method of disease control for the public at large.

SEC. 108. Section 7501 of the Penal Code is amended to read:

7501. In order to address the public health crisis described in Section 7500, it is the intent of the Legislature to do all of the following:

(a) Establish a procedure through which custodial and law enforcement personnel are required to report certain situations and

may request and be granted a confidential HIV test of an inmate convicted of a crime, or a person arrested or taken into custody, if the custodial or law enforcement officer has reason to believe that he or she has come into contact with the blood or semen of an inmate or in any other manner has come into contact with the inmate in a way that could result in HIV infection, based on the latest determinations and conclusions by the federal Centers for Disease Control and the State Department of Health Services on means for the transmission of AIDS, and if appropriate medical authorities, as provided in this title, reasonably believe there is good medical reason for the test.

(b) Permit inmates to file similar requests stemming from contacts with other inmates.

(c) Require that probation and parole officers be notified when an inmate being released from incarceration is infected with AIDS, and permit these officers to notify certain persons who will come into contact with the parolee or probationer, if authorized by law.

(d) Authorize prison medical staff authorities to require tests of a jail or prison inmate under certain circumstances, if they reasonably believe, based upon the existence of supporting evidence, that the inmate may be suffering from HIV infection or AIDS and is a danger to other inmates or staff.

(e) Require supervisory and medical personnel of correctional institutions to which this title applies to notify staff if they are coming into close and direct contact with persons in custody who have tested positive or who have AIDS, and provide appropriate counseling and safety equipment.

SEC. 109. Section 7515 of the Penal Code is amended to read:

7515. (a) A decision of the chief medical officer made pursuant to Section 7511, 7512, or 7516 may be appealed, within three calendar days of receipt of the decision, to a three-person panel, either by the person required to be tested, his or her parent or guardian when the subject is a minor, the law enforcement employee filing a report pursuant to either Section 7510 or 7516, or the person requesting testing pursuant to Section 7512, whichever is applicable, or the chief medical officer, upon his or her own motion. If no request for appeal is filed under this subdivision, the chief medical officer's decision shall be final.

(b) Depending upon which entity has jurisdiction over the person requesting or appealing a test, the Department of Corrections, the Department of the Youth Authority, the county, the city, or the county and city shall convene the appeal panel and shall ensure that the appeal is heard within 30 calendar days from the date an appeal request is filed pursuant to subdivision (a).

(c) A panel required pursuant to subdivision (a) shall consist of three members, as follows:

(1) The chief medical officer making the original decision.

(2) A physician and surgeon who has knowledge in the diagnosis, treatment, and transmission of HIV, selected by the Department of Corrections, the Department of the Youth Authority, the county, the city, or the county and city. The physician and surgeon appointed pursuant to this paragraph shall preside at the hearing and serve as chairperson.

(3) A physician and surgeon not on the staff of, or under contract with, a state, county, city, or county and city correctional institution or with an employer of a law enforcement employee as defined in subdivision (b) of Section 7502, and who has knowledge of the diagnosis, treatment, and transmission of HIV. The physician and surgeon appointed pursuant to this paragraph shall be selected by the State Department of Health Services from a list of persons to be compiled by that department. The State Department of Health Services shall adopt standards for selecting persons for the list required by this paragraph, as well as for their reimbursement, and shall, to the extent possible, utilize its normal process for selecting consultants in compiling this list.

The Legislature finds and declares that the presence of a physician and surgeon on the panel who is selected by the State Department of Health Services enhances the objectivity of the panel, and it is the intent of the Legislature that the State Department of Health Services make every attempt to comply with this subdivision.

(d) The Department of Corrections, the county, the city, or the county and city shall notify the Office of AIDS in the State Department of Health Services when a panel must be convened under subdivision (a). Within 10 calendar days of the notification, a physician and surgeon appointed under paragraph (3) of subdivision (c) shall reach agreement with the Department of Corrections, the county, the city, or the county and city on a date for the hearing that complies with subdivision (b).

(e) If the Office of AIDS in the State Department of Health Services fails to comply with subdivision (d) or the physician and surgeon appointed under paragraph (3) of subdivision (c) fails to attend the scheduled hearing, the Department of Corrections, the county, the city, or the county and city shall appoint a physician or surgeon who has knowledge of the diagnosis, treatment, and transmission of HIV to serve on the appeals panel to replace the physician and surgeon required under paragraph (3) of subdivision (c). The Department of Corrections, the county, the city, or the county and city shall have standards for selecting persons under this subdivision and for their reimbursement.

The Department of Corrections, the Department of the Youth Authority, the county, the city, or the county and city shall, whenever feasible, create, and utilize ongoing panels to hear appeals under this section. The membership of the panel shall meet the requirements of paragraphs (1), (2), and (3) of subdivision (c).

No panel shall be created pursuant to this paragraph by a county, city, or county and city correctional institution except with the prior approval of the local health officer.

(f) A hearing conducted pursuant to this section shall be closed, except that each of the following persons shall have the right to attend the hearing, speak on the issues presented at the hearing, and call witnesses to testify at the hearing:

(1) The chief medical officer, who may also bring staff essential to the hearing, as well as the other two members of the panel.

(2) The subject of the chief medical officer's decision, except that a subject who is a minor may attend only with the consent of his or her parent or guardian and, if the subject is a minor, his or her parent or guardian.

(3) The law enforcement employee filing the report pursuant to Section 7510, or the person requesting HIV testing pursuant to Section 7512, whichever is applicable and, if the person is a minor, his or her parent or guardian.

(g) The subject of the test, or the person requesting the test pursuant to Section 7512, or who filed the report pursuant to Section 7510, whichever is applicable, may appoint a representative to attend the hearing in order to assist him or her.

(h) When a hearing is sought pursuant to this section, the decision shall be rendered within 10 days of the date upon which the appeal is filed pursuant to subdivision (a). A unanimous vote of the panel shall be necessary in order to require that the subject of the hearing undergo HIV testing.

The criteria specified in Section 7511 for use by the chief medical officer shall also be utilized by the panel in making its decision.

The decision shall be in writing, stating reasons for the decision, and shall be signed by the members. A copy shall be provided by the chief medical officer to the person requesting the test, or filing the report, whichever is applicable, to the subject of the test, and, when the subject is in a correctional institution, to the superintendent of the institution, except that, when the subject of the test or the person upon whose behalf the request for the test was made is a minor, copies shall also be provided to the parent or guardian of the person, unless the parent or guardian cannot be located.

SBC. 110. Section 11106 of the Penal Code is amended to read:

11106. (a) In order to assist in the investigation of crime, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of applications for licenses to carry firearms issued pursuant to Section 12050, information reported to the Department of Justice pursuant to Section 12053, dealers' records of sales of firearms, reports provided pursuant to Section 12078, forms provided pursuant to Section 12084, reports provided pursuant to Section 12071 that are not dealers'

records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish to the officers mentioned in Section 11105 hard copy printouts of those records as photographic, photostatic, and nonerasable optically stored reproductions.

(b) (1) Notwithstanding subdivision (a), the Attorney General shall not retain or compile any information from reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, from forms submitted pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or from dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. All copies of the forms submitted, or any information received in electronic form, pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or of the dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to take possession of the firearm. All copies of the reports filed, or any information received in electronic form, pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the receipt by the Attorney General, unless retention is necessary for use in a criminal prosecution.

(2) A peace officer, the Attorney General, a Department of Justice employee designated by the Attorney General, or any authorized local law enforcement employee shall not retain or compile any information from a firearms transaction record, as defined in paragraph (5) of subdivision (c) of Section 12071, for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person unless retention or compilation is necessary for use in a criminal prosecution or in a proceeding to revoke a license issued pursuant to Section 12071.

(3) A violation of this subdivision is a misdemeanor.

(c) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to Sections 12071, 12072, 12078, 12082, and 12084 or any other law, as to pistols, revolvers, or other firearms capable of being concealed upon the person and maintain a registry thereof.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person

being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in Section 12084, or reports made to the department pursuant to Section 12078 or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner, or the person being loaned the firearm, acquired or was loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to Section 12078 or any other law.

(C) Any waiting period exemption applicable to the transaction that resulted in the owner, or the person being loaned the firearm, acquiring or being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person.

(D) The manufacturer's name if stamped on the firearm; model name or number if stamped on the firearm; and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, whether the firearm is new or used, barrel length, and color of the firearm.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105 or to the person listed in the registry as the owner or person who is listed as being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person, in the form of hard copy printouts of that information as photographic, photostatic, and nonerasable optically stored reproductions.

SEC. 111. Section 12033 of the Penal Code is amended to read:

12033. The Department of Consumer Affairs may issue a certificate to any person referred to in subdivision (d) of Section 12031, upon notification by the school where the course was completed, that the person has successfully completed a course in the carrying and use of firearms and a course of training in the exercise of the powers of arrest that meet the standards prescribed by the department pursuant to Section 7583.5 of the Business and Professions Code.

SEC. 112. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who meets all of the following conditions:

(A) Has a valid federal firearms license.

(B) Has any regulatory or business license, or licenses, required by local government.

(C) Has a valid seller's permit issued by the State Board of Equalization.

(D) Has a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) Has a license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice, and the Department of Justice shall issue a certificate to an applicant, if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) The form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph is entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided that the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

- (i) The building designated in the license.
- (ii) The places specified in subparagraph (B) or (C).
- (iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to April 1, 1997, within 15 days of the application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 15 days of the submission to the department of any correction to the application, or within 15 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. Prior to April 1, 1997, within 10 days of the application to

purchase any firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. On or after April 1, 1997, within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped, or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to process, and shall act properly and promptly in processing, firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) "IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(B) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be

delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census, or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter, and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census, or within a city with a population of less than 50,000 persons according to the most recent federal decennial census, may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) This paragraph does not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearms safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with

steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, only for one of the following purposes:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18

of the United States Code for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars (\$85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law are exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain, and make available upon request, information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraphs (14) and (15) of subdivision (b) do not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 113. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, deliver, sell, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

(2) No person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(3) (A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor.

(B) Subparagraph (A) does not apply to or affect those circumstances set forth in subdivision (p) of Section 12078.

(4) No person, corporation, or dealer shall sell, loan, or transfer a firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (c) or (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (c) or (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(6) The dealer shall comply with the provisions of paragraph (18) of subdivision (b) of Section 12071.

(b) No person licensed under Section 12071 shall supply, sell, deliver, or give possession or control of a pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Prior to April 1, 1997, within 15 days of the application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 15 days of the submission to the department of any correction to the application, or within 15 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. Prior to April 1, 1997, within 10 days of the application to purchase any firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. On or after April 1, 1997, within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped, or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to basic firearms safety.

(2) Knowingly grading the examination falsely.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for the basic firearms safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Allowing others to give unauthorized assistance during the examination.

(7) Reference to materials during the examination and cheating by the applicant.

(8) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as specified in subdivision (f) of Section 12805.

(f) No person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless one of the following conditions is met:

(1) The person presents proof of licensure pursuant to Section 12071 to that person.

(2) The person presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(g) (1) Except as provided in paragraph (2) or (3), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section is punishable by imprisonment in the state prison for two, three, or four years.

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, or 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(F) A violation of subdivision (b) involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in a county jail not exceeding one year or in the state prison, or by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment.

(A) A violation of paragraph (2) of subdivision (a).

(B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(C) A violation of paragraph (4) of subdivision (a).

(D) A violation of paragraph (5) of subdivision (a).

(E) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person.

(F) A violation of paragraph (1), (3), (4), or (5) of subdivision (c) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(G) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(H) A violation of subdivision (e).

(4) If both of the following circumstances apply, an additional term of imprisonment in the state prison for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed.

(A) A violation of paragraph (2) of subdivision (a) or subdivision (b).

(B) The firearm transferred in violation of paragraph (2) of subdivision (a) or subdivision (b) is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

SEC. 114. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, transfers, or sales of firearms made to any person properly identified as a full-time paid peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officer is authorized by his or her employer to carry firearms while in the performance of his or her duties, nor to deliveries, transfers, or sales of firearms made to authorized representatives of cities, cities and counties, counties, state or federal governments for use by those governmental agencies. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the seller or transferor at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. On the day that the application to purchase is completed, where a peace officer is receiving the firearm, and either a dealer is not the seller or transferor, or is not otherwise the person responsible for the delivery of the firearm, or the transfer or sale is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, and the firearm as is indicated in Section 12077, together with the original certification. On the day that the application to purchase is completed, where a dealer is the seller or transferor, or is otherwise responsible for delivery of the firearm, and electronic or telephonic transfer of applicant information is used, the dealer shall retain the original certification with the original record of electronic or telephonic transfer. If electronic or telephonic transfer of applicant information is not used, on the day that the application to purchase is completed, where a dealer is the seller or transferor, or is otherwise responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077, together with the original certification. On the day that the application to purchase is completed, where the transfer is conducted pursuant to Section

12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084, together with the original certification. The reports that peace officers shall complete shall be provided to them by the department. No report need be submitted to the Department of Justice where a peace officer receiving the firearm received it from his or her employer in accordance with the applicable rules, regulations, or procedures of the employer.

(2) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, transfers, or sales of firearms made to peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 made pursuant to Section 10334 of the Public Contract Code. On the day that the application to purchase is completed, and a dealer is not the person responsible for the delivery of the firearm or the transfer or sale is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer receiving the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, and the firearm as is indicated in Section 12077. On the day that the application to purchase is completed, where a dealer is the seller or transferor, or is otherwise responsible for delivery of the firearm, and electronic or telephonic transfer of applicant information is used, the dealer shall retain the original certification with the original record of electronic or telephonic transfer. If electronic or telephonic transfer of applicant information is not used, on the day that the application to purchase is completed, where a dealer is responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077. On the day that the application to purchase is completed where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084. The reports that peace officers shall complete shall be the same as those set forth in paragraph (1) of this subdivision and shall be provided to them by the department.

(3) Subdivision (d) of Section 12072 does not apply to sales, deliveries, or transfers of firearms to an authorized representative of a city, city and county, county, or state or federal government that is acquiring the weapon as part of an authorized, voluntary program under which the government entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this

subdivision shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(b) Section 12071 and subdivisions (c) and (d) of Section 12072 do not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) (1) Subdivision (d) of Section 12072 does not apply to the infrequent transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) Subdivision (d) of Section 12072 does not apply to the infrequent transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family and both of the following conditions are met:

(A) The person to whom the firearm is transferred shall, within 30 days of taking possession of the firearm, forward by prepaid mail or deliver in person to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(B) Prior to taking possession of the firearm, the person taking title to the firearm shall obtain a basic firearm safety certificate.

(3) As used in this subdivision, "immediate family member" means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

(d) Subdivision (d) of Section 12072 does not apply to the infrequent loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration.

(e) Section 12071 and subdivisions (c) and (d) of Section 12072 do not apply to the delivery of a firearm to a gunsmith for service or repair.

(f) Subdivision (d) of Section 12072 does not apply to the sale, delivery, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing

with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 does not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions or similar events.

(2) Subdivision (d) of Section 12072 does not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 does not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within two business days of completion of the application to purchase, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in subdivision (c) of Section 12077. If the electronic or telephonic transfer of applicant information is used, within two business days of completion of the application to purchase, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (c) of Section 12077.

(h) Subdivision (d) of Section 12072 does not apply to the loan of a firearm for the purposes of shooting at targets if the loan occurs on the premises of a target facility that holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 does not apply to a person who takes title or possession of firearms by operation of law if all the following conditions are met:

(A) The person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(B) If the firearms are pistols, revolvers, or other firearms capable of being concealed upon the person, and the person is not a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, the person shall, within 30 days of taking possession, forward by prepaid mail or deliver in person to the Department of Justice a report of the same and the type of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(C) In the case of a transmutation of property between spouses made in accordance with Section 850 of the Family Code consisting of a pistol, revolver, or other firearm capable of being concealed upon the person, taking place on or after April 1, 1994, a basic firearms safety certificate shall be required prior to taking possession of the firearm.

(2) Subdivision (d) of Section 12072 does not apply to a person who takes possession of a firearm by operation of law in a representative capacity who transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, that individual shall have a basic firearms safety certificate in order for the exemption set forth in this paragraph to apply.

(j) Subdivision (d) of Section 12072 does not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071 and subdivision (c) of Section 12072 do not apply to any of the following:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state, who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise

in the receiving dealer's business, upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(6) The loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(l) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 does not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 does not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering the firearm that he or she is licensed pursuant to Section 12071.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the application to purchase is completed, the dealer delivering the

firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077. Where the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit an electronic or telephonic report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 do not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) (1) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 do not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor if the loan is made with the express permission of the parent or legal guardian of the minor, does not exceed 30 days in duration, and is for a lawful purpose.

(2) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 do not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by a person who is not the parent or legal guardian of the minor if all of the following circumstances exist:

(A) The minor has the written consent of his or her parent or legal guardian that is presented at the time of, or prior to the time of, the loan, or is accompanied by his or her parent or legal guardian at the time the loan is made.

(B) The minor is being loaned the firearm for the purpose of engaging in a lawful recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 do not apply to the loan of a pistol, revolver, or other firearm

capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(4) Paragraph (3) of subdivision (a) of Section 12072 does not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 does not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her grandparent who is not the legal guardian of the minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(q) Subdivision (d) of Section 12072 does not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by that licensed hunter for a period of time not to exceed the duration of the hunting season for which that firearm is to be used.

(r) The waiting period described in Section 12071, 12072, or 12084 does not apply to the delivery, sale, or transfer of a firearm to the holder of a special weapons permit issued by the Department of Justice pursuant to Section 12095, 12230, 12250, or 12305. On the date that the application to purchase is completed, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084 shall forward by prepaid mail to the Department of Justice a report of the same as described in subdivision (b) or (c) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (b) or (c) of Section 12077.

(s) Subdivision (d) of Section 12072 does not apply to the loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or an entertainment or theatrical event.

(t) The waiting period described in Sections 12071, 12072, and 12084 does not apply to the sale, delivery, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, by a dealer or through a law enforcement agency to a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084 shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) of Section 12077.

(u) As used in this section:

(1) "Infrequent" has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) "A person taking title or possession of firearms by operation of law" includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate, if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof, when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver, if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties, if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(I) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

SEC. 115. Section 12084 of the Penal Code is amended to read:

12084. (a) As used in this section, the following definitions apply:

(1) "Agency" means a sheriff's department in a county of less than 200,000 persons, according to the most recent federal decennial census, that elects to process purchases, sales, loans, or transfers of firearms.

(2) "Seller" means the seller or transferor of a firearm or the person loaning the firearm.

(3) "Purchaser" means the purchaser or transferee of a firearm or the person being loaned a firearm.

(4) "Purchase" means the purchase, loan, sale, or transfer of a firearm.

(5) "Department" means the Department of Justice.

(6) "LEFT" means the Law Enforcement Firearms Transfer Form consisting of the transfer form utilized to purchase a firearm in accordance with this section.

(b) As an alternative to completing the sale, transfer, or loan of a firearm through a licensed dealer pursuant to Section 12082, the parties to the purchase of a firearm may complete the transaction through an agency in accordance with this section in order to comply with subdivision (d) of Section 12072.

(c) (1) LEFTs shall be prepared by the State Printer and shall be furnished to agencies on application at a cost to be determined by the Department of General Services for each 100 leaves in quintuplicate, one original and four duplicates for the making of carbon copies. The original and duplicate copies shall differ in color, and shall be in the form provided by this section. The State Printer, upon issuing the LEFT, shall forward to the department the name and address of the agency together with the series and sheet numbers on the LEFT. The LEFT shall not be transferable.

(2) The department shall prescribe the form of the LEFT. It shall be in the same exact format set forth in Sections 12077 and 12082, with the same distinct formats for firearms that are pistols, revolvers, and other firearms capable of being concealed upon the person and ~~for~~ firearms that are not pistols, revolvers, and other firearms capable of being concealed upon the person, except that, instead of the listing of information concerning a dealer, the LEFT shall contain the name, telephone number, and address of the law enforcement agency.

(3) The original of each LEFT shall be retained in consecutive order. Each book of 50 originals shall become the permanent record of transactions that shall be retained not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, department employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco and Firearms upon the presentation of proper identification.

(4) Ink shall be used to complete each LEFT. The agency shall ensure that all information is provided legibly. The purchaser and seller shall be informed that incomplete or illegible information delays purchases.

(5) Each original LEFT shall contain instructions regarding the procedure for completion of the form and the routing of the form. The agency shall comply with these instructions which shall include the information set forth in this subdivision.

(6) One firearm transaction shall be reported on each LEFT. For purposes of this paragraph, a "transaction" means a single sale, loan, or transfer of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person between the same two persons.

(d) The following procedures shall be followed in processing the purchase:

(1) Without waiting for the conclusion of any waiting period to elapse, the seller shall immediately deliver the firearm to the agency solely to complete the LEFT. Upon completion of the LEFT, the firearm shall be immediately returned by the agency to the seller without waiting for the waiting period to elapse.

(2) The purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the agency. The agency shall require the purchaser to complete the original and one copy of the LEFT. An employee of the agency shall then affix his or her signature as a witness to the signature and identification of the purchaser.

(3) Two copies of the LEFT shall, on that date of purchase, be placed in the mail, postage prepaid to the department at Sacramento. The third copy shall be provided to the purchaser and the fourth copy to the seller.

(4) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) If the department determines that the copies of the LEFT submitted to it pursuant to paragraph (3) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the firearm to be purchased, or if any fee required pursuant to paragraph (6) is not submitted by the agency in conjunction with submission of the copies of the LEFT, or if the department determines that the person is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the agency of that fact. Upon notification by the department, the purchaser shall submit any fee required pursuant to paragraph (6), as appropriate,

and, if notification by the department is received by the agency at any time prior to delivery of the firearm, the delivery of the firearm shall be withheld until the conclusion of the waiting period described in paragraph (7).

(6) (A) The agency may charge a fee, not to exceed actual cost, sufficient to reimburse the agency for processing the transfer.

(B) The department may charge a fee, not to exceed actual cost, sufficient to reimburse the department for providing the information. The department shall charge the same fee that it would charge a dealer pursuant to Section 12082.

(7) The firearm shall not be delivered to the purchaser as follows:

(A) Prior to April 1, 1997, within 15 days of the application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to paragraph (5), within 15 days of the submission to the department of any fees required pursuant to this subdivision, or within 15 days of the submission to the department of any correction to the LEFT, whichever is later. Prior to April 1, 1997, within 10 days of the application to purchase any firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to paragraph (5), within 10 days of the submission to the department of any fees required pursuant to this subdivision, or within 10 days of the submission to the department of any correction to the LEFT, whichever is later. On and after April 1, 1997, within 10 days of the application to purchase, or after notice by the department pursuant to paragraph (5), within 10 days of the submission to the department of any fees required pursuant to this subdivision, or within 10 days of the submission to the department of any correction to the LEFT, whichever is later.

(B) Unless unloaded.

(C) In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, unless securely wrapped or in a locked container.

(D) Unless the purchaser presents clear evidence of his or her identity and age to the agency.

(E) Whenever the agency is notified by the department that the person is in a prohibited class described in Section 12021 or 12021.1, or Section 8100 or 8103 of the Welfare and Institutions Code.

(F) Unless done at the agency's premises.

(G) In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, commencing April 1, 1994, unless the purchaser presents to the seller a basic firearms safety certificate.

(H) Unless the purchaser is at least 18 years of age.

(e) The action of a law enforcement agency acting pursuant to Section 12084 shall be deemed to be a discretionary act within the

meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(f) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, its acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(g) Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the LEFT is guilty of a misdemeanor.

(h) All sums received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund.

SBC. 116. Section 12403.7 of the Penal Code is amended to read:

12403.7. Notwithstanding any other law, any person may purchase, possess, or use tear gas and tear gas weapons for the projection or release of tear gas if the tear gas and tear gas weapons are used solely for self-defense purposes, subject to the following requirements:

(a) No person convicted of a felony or any crime involving an assault under the laws of the United States, the State of California, or any other state, government, or country or convicted of misuse of tear gas under subdivision (g) shall purchase, possess, or use tear gas or tear gas weapons.

(b) No person who is addicted to any narcotic drug shall purchase, possess, or use tear gas or tear gas weapons.

(c) No person shall sell or furnish any tear gas or tear gas weapon to a minor.

(d) No person who is a minor shall purchase, possess, or use tear gas or tear gas weapons.

(e) (1) No person shall purchase, possess, or use any tear gas weapon that expels a projectile, or that expels the tear gas by any method other than an aerosol spray, or that contains more than 2.5 ounces net weight of aerosol spray.

(2) Every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall have a label that states: "WARNING: The use of this substance or device for any purpose other than self-defense is a crime under the law. The contents are dangerous—use with care."

(3) After January 1, 1984, every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall have a label that discloses the date on which the useful life of the tear gas weapon expires.

(4) Every tear gas container and tear gas weapon that may be lawfully purchased pursuant to this section shall be accompanied at the time of purchase by printed instructions for use.

(f) Effective March 1, 1994, every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall be accompanied by an insert including directions for use, first aid information, safety and storage information, and explanation of the legal ramifications of improper use of the tear gas container or tear gas product.

(g) Any person who uses tear gas or tear gas weapons except in self-defense is guilty of a public offense and is punishable by imprisonment in a state prison for 16 months, or two or three years or in a county jail not to exceed one year or by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment, except that, if the use is against a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, engaged in the performance of his or her official duties and the person committing the offense knows, or reasonably should know that the victim is a peace officer, the offense is punishable by imprisonment in a state prison for 16 months or two or three years or by a fine of one thousand dollars (\$1,000), or by both the fine and imprisonment.

SEC. 117. The heading of Article 8 (commencing Section 12800) of Chapter 6 of Title 2 of Part 4 of the Penal Code is amended to read:

Article 8. Basic Firearms Safety Instruction and Certificate

SECTION 118. Section 3493 of the Public Resources Code is repealed.

SEC. 119. Section 4576.1 of the Public Resources Code is amended to read:

4576.1. During the period for which a timber operator license has been suspended or revoked pursuant to Section 4576, the real person in interest, as defined in Section 4570, shall not have any ownership, possessory, security, or other pecuniary interest in, or any responsibility for the conduct of, the timber operations of any person licensed pursuant to this article. This provision does not preclude ownership of publicly traded stock in any corporation.

SEC. 120. Section 6817 of the Public Resources Code is amended to read:

6817. (a) The Controller shall annually as of June 30 apportion, for the fiscal year ending on that date, to each city or county having within its boundaries ungranted tide and submerged lands or other tide and submerged lands granted to it by the state, in which the state has reserved the rights to the mineral deposits contained therein, 1 percent of the revenues paid to the state under Article 4 (commencing with Section 6870) from those tide and submerged lands that are within the limits of the particular county or city, except

that the total amount apportioned to each city or county in each year shall not exceed one hundred thousand dollars (\$100,000) per mile, or fraction of a mile, of ocean frontage that is within, and owned or operated as a park by, that city or county and leased by the commission for the production of oil, gas, and other hydrocarbons, and which ocean frontage is available to the public free of charge for recreational purposes. However, that limitation on the amount that may be apportioned to each city or county in each year does not apply to revenues from leases within the limits of the particular county or city that exceed the revenues paid to the state during the 1983-84 fiscal year. Any city that is fronted, in whole or in part, by a state oil and gas lease shall be qualified to receive an apportionment under this section based on the formula contained in this section. For purposes of this section, tide and submerged lands within the limits of a city shall not be deemed to be within the boundaries of a county except in the case of a city and county. The commission shall, at the time of remitting revenues to the State Treasury received under Article 4 (commencing with Section 6870), report to the Controller the total amount of the revenue paid from the tide and submerged lands to the state, shown with respect to each city or county to which that amount is applicable. The apportionment for any given fiscal year shall be based upon the physical facts with respect to each city or county existing on June 30 of the next preceding fiscal year. The report of the commission and the apportionments of the Controller shall be final.

(b) In addition to any amounts payable to a city or county pursuant to subdivision (a), 20 percent of revenues paid to the state under Article 4 (commencing with Section 6870) that are derived from the production of oil, gas, and other hydrocarbons from a state tideland lease, not to exceed a total amount of two hundred million dollars (\$200,000,000), adjusted annually to reflect increases in the cost of living, as measured by the California Consumer Price Index, shall be paid to the city or county within whose boundaries the lease is located, for a period not to exceed 20 years from commencement of payment, if oil, gas, or other hydrocarbons are extracted under the lease under any of the following circumstances, except as provided in subdivision (c):

- (1) The lease was not under production at any time during 1994.
- (2) Although the lease was under production at some time during 1994, the lease is subject to a boundary adjustment pursuant to Section 6872.5.
- (3) Although the lease was under production in 1994, the lease has new production from a new drilling site constructed after January 1, 1996, including a new offshore platform, an existing offshore platform that has been substantially modified to achieve an increase in production, a subsea well completion, or an upland drilling site where

the upland drilling site was constructed pursuant to a development plan approved by the commission after January 1, 1996.

(4) The extraction is from a production zone not under production prior to January 1, 1996.

(5) The extraction is from new wells drilled as a result of a development plan approved by the commission after January 1, 1996.

(c) Subdivision (b) does not apply to any of the following:

(1) Oil and gas development on tide and submerged lands that have been granted by the state to local government without a reservation of the minerals to the state.

(2) The Long Beach Unit operations, notwithstanding the inclusion in those operations of the Alamitos Beach Park Lands as Tract No. 2.

(3) Any upland location or tideflats. "Tideflats" are areas that are marshy, sandy, or muddy and nearly horizontal coastal flatlands that are alternatively covered and exposed as the tide rises and falls, or that are located within 100 feet inland of the mean high tide line of any beach or tideflat.

(4) Any upland drilling site, unless the site requires the use of slant drilling technology to extract oil, gas, or other hydrocarbons.

(5) Leases that do not have either a local or state development plan submitted for consideration on or before January 1, 2002.

(d) (1) The amounts paid to cities and counties shall be deposited in a special tide and submerged lands fund established by the cities or counties, to be held in trust and to be expended only for the promotion and accommodation of commerce, navigation, and fisheries, for the protection of the lands within the boundaries of the cities and counties, for the promotion, accommodation, establishment, improvement, operation, and maintenance of public recreational beaches and coastline for the benefit of all the people of the state, and for the mitigation of any adverse environmental impact caused by exploration for hydrocarbons on state tide and submerged lands within city or county boundaries or caused by production or transportation of hydrocarbons produced on these tide and submerged lands.

(2) The Legislature hereby finds and declares that the purposes specified in paragraph (1) constitute matters of statewide interest and that the expenditure of funds for those purposes will benefit all of the people of the state.

(e) This section applies with respect to all revenues received in the State Treasury on and after October 1, 1963.

SEC. 121. Section 42010 of the Public Resources Code is amended to read:

42010. (a) The local governing body may, either by ordinance or resolution, upon the recommendation of the appropriate land use planning agency, propose eligible parcels of property within its jurisdiction as a recycling market development zone.

(b) The proposal of a recycling market development zone shall be based upon the following findings by the local governing body:

(1) The current waste management practices and conditions are favorable to the development of postconsumer waste material markets.

(2) The designation as a recycling market development zone is necessary to assist in attracting private sector recycling investments to the area.

(c) (1) The Recycling Market Development Revolving Loan Subaccount is hereby created in the account for the purpose of providing loans for purposes of the Recycling Market Development Revolving Loan Program established pursuant to this article.

(2) Notwithstanding Section 13340 of the Government Code; the funds deposited in the subaccount are hereby continuously appropriated to the board without regard to fiscal year for making loans pursuant to this article.

(3) The board may, upon appropriation by the Legislature in the annual Budget Act, expend interest earnings on funds in the subaccount for administrative expenses incurred in carrying out the Recycling Market Development Revolving Loan Program.

(4) The money from any loan repayments and fees, including, but not limited to, principal and interest repayments, fees and points, recovery of collection costs, income earned on any asset recovered pursuant to a loan default, and funds collected through foreclosure actions, shall be deposited in the subaccount.

(5) All interest accruing on interest payments from loan applicants shall be deposited in the subaccount.

(6) The board may make low-interest loans to local governing bodies and private business entities within a recycling market development zone from money in the subaccount for the purpose of assisting the board and local agencies in complying with Section 40051 and to assist counties and cities in complying with Section 41780.

(7) The board shall establish and collect fees for applications for loans authorized by this section. The application fee shall be set at a level that is sufficient to fund the board's cost of processing applications for loans. In addition, the board shall establish a schedule of fees, or points, for loans that are entered into by the board, to fund the board's administration of the revolving loan program.

(8) The board may, upon appropriation by the Legislature in the annual Budget Act, expend money in the subaccount for the administration of the Recycling Market Development Revolving Loan Program. In addition, the board may fund administration of the revolving loan program from the account upon appropriation by the Legislature in the annual Budget Act. However, funding for the administration of the revolving loan program from the account shall

be provided only if there are not sufficient funds in the subaccount to fully fund administration of the program.

(9) The board, pursuant to subdivision (a) of Section 47901, may set aside funds for the purposes of paying costs necessary to protect the state's position as a lender-creditor. These costs shall be broadly construed to include, but not be limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility costs, repair costs, removal and storage costs for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

(d) Loans made pursuant to subdivision (c) shall be subject to all of the following requirements:

(1) The terms of any approved loan shall be specified in a loan agreement between the borrower and the board. The loan agreement shall include a requirement that the failure to comply with the agreement shall result in any remaining unpaid amount of the loan, with accrued interest, being immediately due and payable. Notwithstanding any term of the agreement, any recipient of a loan that the board approves shall repay the principal amount, plus interest on the basis of the rate of return for money in the Surplus Money Investment Fund at the time of the loan commitment. Except as provided in subdivision (g), all money received as repayment and interest on loans made pursuant to this section shall be deposited in the subaccount.

(2) The term of any loan made pursuant to this section shall be not more than 10 years.

(3) The board shall approve only those loan applications that demonstrate the applicant's ability to repay the loan. The highest priority for funding shall be given to projects that demonstrate that the project will increase market demand for recycling the project's type of postconsumer waste material.

(4) The board shall finance not more than one-half of the cost of the project, or not more than one million dollars (\$1,000,000) for loans to the project, whichever is less.

(5) The board shall encourage applicants to seek participation from private financial institutions or other public agencies. For purposes of enabling the board and local agencies to comply with Sections 40051 and 41780, the board may, on a pilot basis, participate, in an amount not to exceed five hundred thousand dollars (\$500,000), in the Capital Access Loan Program as provided in Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the Health and Safety Code.

(6) The Department of Finance may audit the expenditure of the proceeds of any loan made pursuant to this section.

(e) Upon authorization by the Legislature in the annual Budget Act, the Controller shall transfer the sum of five million dollars

(\$5,000,000) from the account to the subaccount for the purpose of making loans pursuant to this section. Commencing July 1, 2000, upon authorization by the Legislature in the annual Budget Act, the amount of the funds transferred pursuant to this section shall be a sum not to exceed five million dollars (\$5,000,000) as necessary to meet anticipated loan demand. Those amounts shall be a loan to the subaccount, repayable with interest to the account at the rate of return for money in the Surplus Money Investment Fund.

(f) The board shall, as part of the annual report to the Legislature pursuant to Section 40507, include a report on the performance of the Recycling Market Development Revolving Loan Program, including the number and size of loans made, characteristics of loan recipients, projected loan demand, and the cost of administering the program.

(g) All money remaining in the subaccount on July 1, 2006, and all money received as repayment and interest on loans shall, as of July 1, 2006, be transferred to the account, and any money due and outstanding on loans as of July 1, 2006, shall be repaid to the board and deposited by the board in the account until paid in full, except that, upon authorization by the Legislature in the annual Budget Act, interest earnings may be expended for administrative costs associated with the collection of outstanding loan accounts.

(h) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2006, and as of January 1, 2007, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 122. Section 42350 of the Public Resources Code is amended to read:

42350. —(a) For the purposes of this section, "degradable" means all of the following:

(1) Biodegradation, photodegradation, chemodegradation, or degradation by other natural degrading processes, as defined by the American Society of Testing Materials.

(2) Degradation at a rate that meets the requirements of Part 238 (commencing with Section 238.10) of Subchapter H of Chapter I of Title 40 of the Code of Federal Regulations.

(3) Degradation that, as attested by the manufacturer of the device, will not produce or result in a residue or byproduct that, during or after the process of degrading, would be a hazardous or extremely hazardous waste identified pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(b) Except as provided in subdivision (c), no container shall be sold or offered for sale at retail in this state that is connected to any

other container by means of a plastic ring or similar plastic device that is not degradable when disposed of as litter.

(c) This section does not apply to devices that do not contain an enclosed hole or circle of more than one and one-half inches in diameter or that do not contain a hole.

(d) Any person who sells at wholesale or distributes to a retailer for sale at retail in this state containers that are connected to each other in violation of subdivision (b) is guilty of an infraction and shall be punished by a fine not exceeding one thousand dollars (\$1,000).

SEC. 123. Section 43210 of the Public Resources Code is amended to read:

43210. For those facilities that accept only hazardous wastes, or accept only low-level radioactive wastes, or facilities that accept only both, and to which Chapter 6.5 (commencing with Section 25100) of Division 20 or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code applies, the board and the enforcement agency have no enforcement or regulatory authority. All enforcement activities for the facilities relative to the control of hazardous wastes shall be performed by the Department of Toxic Substances Control pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20 of the Health and Safety Code, and all enforcement activities relative to the control of low-level radioactive waste shall be performed by the State Department of Health Services pursuant to Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code.

SEC. 124. Section 43211 of the Public Resources Code is amended to read:

43211. (a) For those facilities that accept both hazardous wastes and other solid wastes, the Department of Toxic Substances Control shall exercise enforcement and regulatory powers relating to the control of the hazardous wastes at the facility pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The board and the enforcement agency shall, at solid waste disposal facilities, exercise enforcement and regulatory powers relating to the control of solid wastes and asbestos-containing waste, as provided in Section 44820.

(b) For purposes of this section, "asbestos containing waste" means waste that contains more than 1 percent by weight, of asbestos that is either friable or nonfriable.

SEC. 125. Section 368 of the Public Utilities Code is amended to read:

368. Each electrical corporation shall propose a cost recovery plan to the commission for the recovery of the uneconomic costs of an electrical corporation's generation-related assets and obligations identified in Section 367. The commission shall authorize the electrical corporation to recover the costs pursuant to the plan if the plan meets the following criteria: